

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA ) 2:19-cr-00350-JD-1  
Plaintiff, ) 2:19-cr-00350-JD-2  
vs. ) 2:19-cr-00350-JD-3  
 ) Philadelphia, PA  
DONNIE SMITH, ABID )  
STEVENS AND MAURICE QUINN, ) February 3, 2020  
Defendants. ) 9:49 a.m. - 5:05 p.m.

JURY TRIAL - DAY SIX  
BEFORE THE HONORABLE JAN E. DUBOIS  
UNITED STATES DISTRICT JUDGE

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1 P R O C E E D I N G S

2 THE COURT: Good morning everyone.

3 Please be seated.

4 (Chorus of good morning)

5 THE COURT: First, we were held up a  
6 bit this morning because of difficulty in transporting  
7 the Defendants, but we're ready to start now.

8 I made minor changes in the verdict  
9 forms to clarify the instructions regarding the  
10 finding of "brandishing," and I decided one other  
11 change was necessary. In the verdict forms that we  
12 gave to counsel last week, we referred to "the"  
13 firearm, and I decided better to use the term "a"  
14 firearm, because there were different firearms. And  
15 that's true with respect to the three verdict forms.

16 Next, I saw your stipulations. A  
17 little unusual that they're not signed, but we'll  
18 certainly receive them. One of them, it doesn't make  
19 sense. I refer to the Maurice Quinn verdict format.  
20 I think it's the punctuation, quoting Stipulation No.  
21 2, "There's a stipulation bind between the Government  
22 and counsel for Defendant Maurice Quinn that had the  
23 Government presented the entirety of the available  
24 phone records between February 16th and March 27th,  
25 2019," period. And it's obvious that what needed to

1 be changed -- what needs to be changed, there needs to  
2 be a comma after 2019, because what follows is, "Those  
3 records would show semi-regular contact between Mr.  
4 Smith and Mr. Quinn." I think I should return -- I  
5 don't want to do the changing of the stipulations, but  
6 I think that should be done, and then we'll file the  
7 three stipulations.

8 Ms. Meehan, is that what was intended?

9 MS. MEEHAN: Yes, Your Honor. I'll --

10 THE COURT: Fine.

11 MS. MEEHAN: -- fix it over the lunch  
12 break, Your Honor.

13 THE COURT: Thank you. Well, we don't  
14 need it now.

15 We're going to proceed with closing  
16 arguments. I assume you're ready, and there are no  
17 other issues?

18 MS. MARTIN: I am, Your Honor.

19 THE COURT: And you looked at the  
20 charge, and we'll get comments from all four of you,  
21 or however many of you there are.

22 Government, the revised charge. Any  
23 issues?

24 MR. ECKERT: No, Your Honor.

25 THE COURT: Mr. Patterson?

1 MR. PATTERSON: No objection, Your  
2 Honor, thank you.

3 MR. WITTELS: No objection.

4 MS. MEEHAN: No objection.

5 THE COURT: All right.

6 MR. WITTELS: Judge, I do have one  
7 issue. The Government has the gun in a box on the  
8 edge of their table. I understand they want to use it  
9 in their closing. That's not a problem as long as  
10 they do it properly, but I would ask that it be moved  
11 away from the jury box, because having it there is  
12 distracting to the jury and provocative.

13 THE COURT: Say no more. I agree with  
14 you. Where should we put the gun?

15 MS. MARTIN: Your Honor, I just don't  
16 want it to be distracting when I reach for it. Is it  
17 okay if I put it on this side of my table?

18 THE COURT: Well, Mr. Wittels is  
19 correct, it's inappropriate to have something that  
20 would cause the jury to focus on an object and not on  
21 the presentation. Close the box.

22 MS. MARTIN: Would it be all right if I  
23 closed the box?

24 THE COURT: Yes. I think that's fine.  
25 Mr. Wittels?

1 MR. WITTELS: That's fine, Judge.

2 THE COURT: Good. Ms. Hull, do you  
3 want to bring the jury in?

4 (Pause)

5 CLERK: All rise.

6 (Jury in)

7 THE COURT: Good morning everyone.  
8 Please be seated.

9 (Chorus of good morning)

10 THE COURT: On Friday, the evidence was  
11 concluded. After you left, we had arguments on the  
12 legal issues that are typically presented at the end  
13 of the evidentiary portion of the trial. I ruled on  
14 them, and now we will begin the closing arguments.

15 As I told you before, closing arguments  
16 are not evidence, but I've been told by many, many  
17 jurors that they find them very helpful, for among  
18 other things, they might cause you to focus on issues  
19 that would otherwise escape your attention.

20 The Government goes first, followed by  
21 -- are we back to usual order, Mr. Patterson?

22 MR. PATTERSON: We are, Your Honor,  
23 yes.

24 THE COURT: Patterson first?

25 MR. PATTERSON: Yes.

1 THE COURT: Wittels?

2 MR. WITTELS: Yes.

3 THE COURT: Meehan?

4 MS. MEEHAN: Yes, Your Honor.

5 THE COURT: And then, because the  
6 Government has the burden of proof, the Government has  
7 an opportunity for a brief rebuttal.

8 We hope to finish the closing arguments  
9 before lunch, might not, and we'll talk about that at  
10 lunch, and I will instruct you on the law, hopefully,  
11 right after lunch, but if not, immediately following  
12 the end of the closing arguments. I'll have more to  
13 say about the schedule just before lunch.

14 All right. Is the Government ready to  
15 proceed?

16 MS. MARTIN: We are, Your Honor.

17 THE COURT: You may --

18 MS. MARTIN: Thank you.

19 THE COURT: You may proceed, Ms.  
20 Martin.

21 CLOSING ARGUMENTS

22 MS. MARTIN: This was not a  
23 misunderstanding. This was a robbery. Donnie Smith,  
24 Abid Stevens, and Maurice Quinn went into that store,  
25 they cornered the store clerk, Joel (phonetic), in the



1 back corner of that store. They put two guns up to  
2 Joel's head. One, Donnie Smith, into his chest, as he  
3 reaches and takes the gun from Joel Ventura, and he  
4 leaves with that gun. We know that Maurice Smith  
5 (sic) took the money in this case. This is not a  
6 misunderstanding; this is a robbery, and you have  
7 enough evidence to convict these individuals based on  
8 the video alone. But there's so much more in this  
9 case.

10 Actions speak louder than words,  
11 (indiscernible - 10:05:22) it's tried and true. And  
12 the Judge, he instructed you on the law in this case  
13 that embodies that principle. He told you about  
14 direct and circumstantial evidence.

15 Do you remember that example he gave  
16 you, the example about the rain? If you walked  
17 outside right now, and you see that it's raining, you  
18 know that it rained. But if you're here in this  
19 windowless courtroom, somebody comes in sopping wet,  
20 rain jacket, shaking off their umbrella, you have  
21 circumstantial evidence that it rained. You have  
22 facts that allow you to conclude that something else  
23 happened. You know it rained without seeing it rain.

24 Why does that matter? Here -- first of  
25 all, you can never prove somebody's intent. You can't

1 look inside their mind and know what their intent is,  
2 but it's their actions, it's their words, and it's  
3 their choices that allow you to infer their intent.  
4 And that's what's happening in this case. And the  
5 Judge is also going to tell you that you can use that  
6 concept, circumstantial evidence, equally valid as  
7 direct evidence, to conclude that those guns in that  
8 picture right there are real.

9 But let's take a step back. This all  
10 starts with the scam. Maurice Quinn walks up to that  
11 ATM at 4:47 p.m., and he takes out \$20, puts it in his  
12 wallet, walks up to the store clerk, here, puts out a  
13 fake \$20 bill, and tries to buy cigarettes. Joel  
14 Ventura, the store clerk, he tells him, "That's fake."  
15 And actually, when he was on this stand, what he told  
16 you was that he knew that money was fake the second it  
17 was put on the counter.

18 He tells Maurice Quinn, "That's fake  
19 money. It's not good."

20 How does Maurice Quinn react? Is the  
21 reaction, "Oh, wow. It's fake money. I had no idea"?  
22 No, he gets angry. He gets angry, and he throws \$100  
23 down on the counter, and he tells Joel Ventura,  
24 "You're going to give me that money from that  
25 register."

1                   He doesn't ask him to check the other  
2                   bills. Are they fake? Common sense and life  
3                   experience tells you that Maurice Quinn knew that  
4                   money was fake when he walked up to that counter.  
5                   Common sense and life experience tells you, and these  
6                   ATM records tell you, that Maurice Quinn took \$20 out  
7                   at 4:47 p.m., three minutes before the surveillance  
8                   video starts.

9                   You know also from those bank records,  
10                  a \$42 balance remaining in Maurice Quinn's account.  
11                  He couldn't have taken \$100 out if he wanted to. And  
12                  you also saw those payroll deposits, those bi-weekly  
13                  payroll deposits that averaged \$700 prior to this day  
14                  -- prior to March 22nd, 2019. You know that next  
15                  payroll check is not coming for another 10 days, and  
16                  those next two payroll checks averaged \$68. The bank  
17                  account balance goes into the negative and stays  
18                  there. Maurice Quinn is out of money.

19                  So what does Joel Ventura do? He calls  
20                  the store manager, Isalisa (phonetic) Rodriguez, and  
21                  you heard from her. And she explains to Quinn in  
22                  perfect English, no possibility of a misunderstanding  
23                  here, and you saw him hand over the cell phone.  
24                  Isalisa Rodriguez explains in perfect English to  
25                  Maurice Quinn that the ATM is not owned by them, that

1 it's separate, that she's going to deal with the  
2 problem. She'll call the ATM manager, and she's on  
3 her way over.

4 But Maurice Quinn doesn't accept that.  
5 And why he doesn't accept that makes perfect sense,  
6 because the jig is up. Isalisa Rodriguez is on her  
7 way to the store, and he knows that the second that  
8 someone checks those ATM records, they're going to  
9 find out he took out \$20, not \$100.

10 So he goes around to the other side of  
11 the counter. He thinks he can pull a fast one on Joel  
12 Ventura, a guy that doesn't speak great English. He's  
13 a little timid, a little mild-mannered. And on the  
14 other guy in the store, Emmanuel Sanchez, the new guy,  
15 the cook, he's only been there three day. He thinks  
16 if he yells loud enough, if he bangs his fist hard  
17 enough, that he can get that \$100 from Joel Ventura.  
18 That's when he escalates. Isalisa is on her way.

19 Putting that money in his face, putting  
20 that money in his face, demanding the money. And  
21 we'll talk about what he said, you know what he was  
22 saying. He's saying, "Give me the fucking money."

23 And what happens next? Abid Stevens  
24 walks in the door. And why does that matter? Because  
25 it's Abid Stevens on the other side of that counter --

1 on the other side of that counter, the moment that  
2 Maurice Quinn escalates again. And you saw me when I  
3 was talking to Emmanuel Sanchez, I walked up to the  
4 stand right here, and I said, "How far away are you  
5 when you were across the counter?"

6 He says, "Two feet." So you have Abid  
7 Stevens yelling from one side of the counter. You  
8 have Maurice Quinn physically cornering Joel Ventura  
9 on the other side of the counter. He's advancing on  
10 him. He's cornering him. He's in his face. He's  
11 screaming at him -- screaming at him, and we know what  
12 he said. You heard that quote, and you heard it  
13 twice. "Give me fucking money. Give me fucking  
14 money. Give me fucking everything, money. Give me  
15 fucking money, Glock. Give me Glock. Give me Glock.  
16 Give me gun right now. Right now."

17 Joel Ventura knows, in that moment,  
18 with that quote, he knows that Maurice Quinn sees the  
19 gun on the other side of the register. He's  
20 terrified. Quinn has physically advanced on him to a  
21 point where Joel Ventura has nowhere to go, and he  
22 does the only thing that makes sense, the only thing  
23 he can do to prevent Maurice Quinn from getting that  
24 gun, Joel Ventura grabs the store gun, and he puts it  
25 down by his side.

1                   He never lifts that gun. He never  
2 points that gun at anybody. He puts it down at his  
3 side. And that's when Quinn backs up. But it's not  
4 over. Quinn walks around the corner, he walks toward  
5 the exit, and we all know what happens in this moment.  
6 You know what happens in this moment. That's the  
7 moment that he bangs on the Plexiglas, bangs on the  
8 Plexiglas, and what does he say? One last threat.  
9 "I'll be back."

10                   So you have Abid Stevens in the store,  
11 standing there across the counter from Joel, again,  
12 two feet away, and you see Abid Stevens on the video.  
13 He's still screaming at Joel. And we know what's  
14 happening in that moment, because Emmanuel Sanchez is  
15 standing right there next to him. We know that Abid  
16 Stevens is saying, "Oh, you got a gun? You got a gun?  
17 You going to pull a gun on my family?"

18                   And then what does Abid Stevens say  
19 right before he leaves? He says the exact same thing.  
20 "I'll be back."

21                   Let's think about this moment, and  
22 Emmanuel Sanchez and Joel Ventura told you about this  
23 moment. All they needed was five more seconds to get  
24 that door shut. Joel Ventura is frantically telling  
25 Emmanuel, in Spanish, to close that door, to lock that

1 door. Joel Ventura told you he knew something  
2 terrible was going to happen. They needed five more  
3 seconds.

4 But why else is this moment important?  
5 Every single one of the Defendants in this case is  
6 outside of the store. Stop and think about that.  
7 Think about the choices that all three of them had to  
8 make to go back into that store. Think about what  
9 would have happened if they could have locked the  
10 door.

11 Think about where they went, too. How  
12 do you know what's happening outside of the store?  
13 Maurice Quinn, when he leaves, that threat, "I'll be  
14 back." He goes out the store, and he goes to the  
15 right. Twenty seconds later, Abid Stevens, where does  
16 he go, out the door to the right. Donnie Smith hasn't  
17 even been in the store yet. But there, in that same  
18 moment, in that same moment where they only needed  
19 five more seconds, who do you see in the background of  
20 that video? Who do you see coming from the right-hand  
21 side, over to the left-hand side? You see Donnie  
22 Smith.

23 Twenty seconds after Quinn leaves, two  
24 seconds after Abid Stevens leaves, they're all over on  
25 the right-hand side. And Donnie Smith, he goes

1 running to the left-hand side. And you saw this  
2 video. He goes running from that right-hand side over  
3 to the left-hand side. And what are you going to see?  
4 You're going to see him come up on the left side to  
5 the car that we know is his. He's going to be  
6 running, running to that car.

7 He's at the car one, two, three, four,  
8 five, six, seven seconds, out the door with his gun,  
9 running back to the store. He hasn't even been in the  
10 store yet, but he runs to his car, six seconds, gets a  
11 gun, and comes back. Three seconds after Donnie runs  
12 from that screen, from the right to the left, that's  
13 when Maurice Quinn goes back into the store. And  
14 what's Maurice Quinn doing when he goes back into that  
15 store? It's the same thing all over again, screaming,  
16 screaming at Joel, screaming at Emmanuel Sanchez.

17 But what's different? We know the  
18 moment that Quinn backs off originally, it's because  
19 Joel had the store gun at his side. We know Maurice  
20 Quinn doesn't have a gun in the moment.

21 So what changed? What changed is that  
22 he got backup. He knows his friends are on the way.  
23 And how do you know that? He spends 20 seconds  
24 holding the door open while he's screaming at Joel and  
25 Emmanuel.



1                   Why is he holding the door open? He's  
2 holding the door open, because he knows he just sent  
3 his buddy, Donnie Smith, to get a gun and to bring it  
4 back. And what happens? Donnie Smith comes blazing  
5 in the door, blazing in the door right behind him. He  
6 leans in, he tells his wife to leave -- and we'll go  
7 back to her in a minute. He tells his wife to leave,  
8 and you know exactly what's going to happen next. In  
9 that moment, tells her to leave, he's going to walk  
10 into the middle of the store, he's going to take up,  
11 almost, a position, and then he's going to pull out  
12 that gun, and he's going to point it at Joel Ventura.

13                   Donnie Smith was on a mission in that  
14 moment. So let's talk about what Donnie Smith knew or  
15 didn't know when he walked into that store. No  
16 possible way he could have seen Joel Ventura with a  
17 gun. We've heard all this about his wife being in the  
18 store, how she was going to get locked in this store,  
19 and he needed to protect her. Well, Emmanuel and Joel  
20 are talking in Spanish when they're talking about  
21 locking the door, first of all. Second of all, no way  
22 he could have known that Joel had a gun, but for  
23 Maurice Quinn telling him outside.

24                   But how do you know that this isn't  
25 about Donnie's wife? How do you know he didn't see

1 Joel with a gun? Look at where Joel's hands are when  
2 Donnie Smith walks into the door. Both hands are up  
3 in the air. That store gun is in Joel Ventura's  
4 pocket. Donnie Smith makes the decision to pull out a  
5 gun before he ever sees Joel Ventura with a gun.

6 And, again, right here, the moment that  
7 you see Donnie Smith pull the gun, where is Joel  
8 Ventura's gun? It's in his pocket. The store gun is  
9 in his pocket. And, by the way, where's Donnie  
10 Smith's wife? Out the door. At the moment he pulls  
11 the gun, his wife's gone. There it is again, the  
12 gun's even higher, raised at his chest. Joel can't  
13 even get the store gun out of his pocket.

14 And who's coming in hot 10 seconds  
15 later? Abid Stevens in the background, right as  
16 Donnie Smith's wife's walking out. Ten seconds after  
17 Donnie Smith goes in and lines up a position on Joel  
18 Ventura.

19 And what do we know? What do we know  
20 about Abid Stevens? What do you know about Abid  
21 Stevens? He's got that gun in his hand already. He's  
22 out of the store for 44 seconds after he says, "I'll  
23 be back." He says, "I'll be back," and he comes back  
24 with a gun, 10 seconds after Donnie Smith comes in  
25 with a gun.

1                   In this moment, you know that Donnie  
2     Smith and Maurice Quinn have started physically  
3     advancing on Joel Ventura yet again, physically  
4     advancing on him into that corner. But I want to  
5     focus on what you see Mr. Stevens doing at this point.  
6     Stevens is acting as crowd control. He's got his hand  
7     out. He's making sure that Emmanuel Sanchez can't get  
8     involved in this situation. He makes sure that it  
9     stays outnumbered 3 to 2. There he is, Emmanuel  
10    Sanchez, arms up, with Abid Stevens' arm out. And  
11    what in Abid Stevens' hand? It's that gun. A gun  
12    that Emmanuel Sanchez told you he absolutely thought  
13    was real.

14                  But then Stevens gets involved. He  
15    starts pushing him into the corner, pushing him into  
16    the corner with the other two. And that's the moment  
17    both guns are up, trained on Joel Ventura's face,  
18    chest. And all three of the Defendants are standing  
19    there in that moment. They're about to go for the  
20    gun. Is Donnie Smith going for the gun? Look at  
21    where Donnie Smith's gun is in relation to Joel  
22    Ventura. It's in his chest. It's physically in his  
23    chest with his left hand as he's reaching for the gun.  
24    This is the moment the gun's stolen, reaching for the  
25    gun with his right hand.

1                   And where's Maurice Quinn? Hot on his  
2 tail. Maurice Quinn is right there, acting as backup,  
3 at the moment that Donnie Smith goes for the gun.

4                   And what's Abid Stevens doing? Abid  
5 Stevens has his gun trained on Joel Ventura's chest  
6 the entire time.

7                   There is the moment they get the gun.  
8 And how do you know they've got the gun? It's right  
9 there in Donnie's hands. Right there in Donnie  
10 Smith's hands, both hands, he's got the gun. He's got  
11 his gun in his left hand, he's got the store gun in  
12 his right hand.

13                  It's not over yet, though. Maurice  
14 Quinn, it's about the money. He goes after Joel  
15 Ventura again. Now, they have all of the guns, and  
16 they've got the manpower. He starts screaming at Joel  
17 Ventura again. He strangles Joel Ventura at one  
18 point. They have all the guns at this point. And  
19 here comes Donnie Smith again, gun out, trained on  
20 Joel Ventura as Maurice Quinn strangles him.

21                  That's when Maurice Quinn goes behind  
22 the counter. He's behind the counter for 47 seconds,  
23 47 seconds, and what does he do? He takes the sleeves  
24 of his sweatshirt, and for 47 seconds, he's pushing  
25 buttons on that register. 47 seconds, but he can't

1 get it open.

2 So what does he do? Flying back in  
3 Joel Ventura's face. And then he's going to order  
4 him, he's going to force him, he's going to tell him  
5 that you're getting behind that register, and you're  
6 giving me the money. And that's exactly what he does.  
7 What else can Joel Ventura do in that moment when  
8 there's three men, three guns, and we know where  
9 Donnie Smith's standing this entire time, as well.

10 Donnie Smith's in the middle of that  
11 store, hands in both pockets. And you know there's  
12 two guns in those pockets. He's standing between the  
13 exit -- he's standing between Joel Ventura, Emmanuel  
14 Sanchez, and the exit the entire time. And you know  
15 what he's been saying to Maurice Quinn when he's on  
16 the other side of that counter. "Take it all. Take  
17 it all."

18 You know that he hands the gun off to  
19 Abid Stevens, that Abid Stevens hands the gun off to  
20 Maurice as they're leaving, before they're leaving  
21 when Abid Stevens is telling him to get out of there.  
22 Abid Stevens is going to stay behind, and we'll talk  
23 about why in a minute. But they take the gun, and  
24 Abid Stevens does the only things he can do in this  
25 moment, try to convince Isalisa Rodriguez not to make

1 this a police matter.

2           There, the moment that Emmanuel Sanchez  
3 told you police sirens are going. They hear the  
4 police sirens, and Maurice Quinn is physically  
5 removing Donnie Smith from the scene, pulling him  
6 along. And you know what happens when Abid Stevens  
7 can't convince Isalisa Rodriguez not to make it a  
8 police matter. He gets in her face. He starts  
9 screaming at her. He starts threatening her. He  
10 tells her, "This is my neighborhood. This is my  
11 block, and I will shut your store down."

12           This is not a misunderstanding. This  
13 is not a misunderstanding. This is a robbery. And at  
14 the end of these closings, the Judge is going to  
15 instruct you on the law, but I want to take a minute,  
16 and I want to go through each of the charges.

17           The first is Hobbs Act robbery. Hobbs  
18 Act robbery in its most simple form, most simple  
19 terms, is a violent taking. It's a violent taking  
20 from an individual who works in a business that  
21 interacts in interstate commerce. That means they buy  
22 and sell goods that travel across state lines. And  
23 we'll get to "interstate commerce" in a second, but a  
24 violent taking. Violence, it means violence. It's  
25 actual or threatened force. And a taking. Here, we

1 have the taking of the gun, and we have the taking of  
2 the money.

3 How do we know there's violence here?  
4 Well, you heard the threats. "I'll be back. I'll be  
5 back," the threats that Stevens makes at the end of  
6 it, but there's obviously guns in Joel Ventura's face  
7 at the moment that the gun is taken from him. There  
8 are three men in the store outnumbering them at the  
9 moment that the money is taken. He's choked,  
10 strangled before the money's taken. And then, of  
11 course, you know that there is an actual taking.

12 Another element that you need to find  
13 as a jury is that both Joel Ventura, or one or the  
14 other, Joel Ventura and Emmanuel Sanchez had a  
15 reasonable fear of injury. They told you that they  
16 thought those guns were real. Those guns were pointed  
17 at them, and they were scared for their life. Joel  
18 Ventura told you he thought his life was one finger-  
19 pull away from being over. Emmanuel Sanchez told you  
20 that he was afraid in this moment. These men had guns  
21 on them. This man had a gun in his chest. Reasonable  
22 fear of injury.

23 Interstate commerce. This is an  
24 element that's established when something's taken from  
25 a business that transacts across state lines. They

1 buy and sell goods from people in other places. You  
2 heard Isalisa Rodriguez testify that she buys her  
3 hoagie rolls from New Jersey, and she buys bulk foods  
4 from Krasdale (phonetic) in New York. That's enough  
5 for interstate commerce, buying things that cross  
6 state lines.

7 But there's a little bit more in this  
8 case. And there's a couple of other nuances the Judge  
9 is going to tell you about. He's going to tell you  
10 that, one, the Defendants don't have to intend to  
11 affect interstate commerce, don't have to prove that.  
12 He's going to tell you that it's something that  
13 affected or could have affected interstate commerce,  
14 meaning the flow of goods. And he's going to tell you  
15 that it doesn't have to be a lot, minimal is  
16 acceptable.

17 And here, we have actual interference with  
18 interstate commerce. This is earlier in the  
19 surveillance video when Maurice Quinn is physically  
20 encroaching upon Joel Ventura behind the counter.  
21 He's backing him into the counter. You have this  
22 gentleman here in the middle. He's got a lemonade,  
23 and he's got money out. Essentially, at the exact  
24 moment that Maurice Quinn knocks those Slim Jims over,  
25 this man sets his soda down -- his lemonade, and he



1 walks out of the store. So he walks out on a sale.

2 Same thing with this gentleman in the  
3 background, here, in the blue with the little girl.  
4 He's going -- he's got six bags of chips in his hand.  
5 At the moment that Abid Stevens comes in and is  
6 screaming at Joel from the other side of the counter,  
7 that's when this man puts his stuff down on the  
8 counter, and he leaves. And you see that same stuff  
9 sitting on the counter during the robbery. It's the  
10 same stuff that Emmanuel Sanchez is putting away.  
11 Commerce was actually disrupted here, because they  
12 missed out on business. That's interstate commerce,  
13 in and of itself.

14 So I told you what Hobbs Act robbery  
15 is, but I'd like to also explain conflict liability.  
16 It's also known as aiding and abetting. The law is  
17 based on common sense. The law makes sure that there  
18 -- that people who participate in a crime, such as a  
19 robbery, are held accountable, even if they are not  
20 the ones who physically took the item from an  
21 individual.

22 Everyone's heard of an accomplice. You  
23 hear about it on TV, you hear about it in the movies.  
24 It's your partner in crime. It's the person who helps  
25 you out. It's the person who helps you accomplish

1 your goals. And that's essentially what the law says.  
2 The law says that we need to establish that somebody  
3 actually committed the robbery, so, meaning, Maurice  
4 Quinn with the money, or Donnie Smith with the gun,  
5 that the accomplice knew it was happening, intended to  
6 help, and actually helped. It's as simple as that.

7 Take a classic bank robbery example.  
8 You've got three guys who go to rob a bank. You've  
9 got the getaway driver. You've got the guy that goes  
10 into the bank. He's going to disarm the security  
11 guard. And then you've got the guy that actually  
12 steals the money. Well, we don't actually just -- we  
13 don't hold the guy who stole the money responsible, we  
14 hold all three responsible. All three are guilty of  
15 the robbery, because they agreed to participate in the  
16 crime, they intended to help, and they did help.  
17 That's what we have here.

18 Let's talk about it with regard to the  
19 store gun. You know, first of all, robbery was  
20 committed. You know that Donnie Smith stole the gun.  
21 We've gone over it now a couple of times. You saw the  
22 moment on the video where Donnie Smith took the store  
23 gun. You saw the moment on the video when Donnie  
24 Smith has both of the guns. Joel Ventura testified  
25 that Donnie Smith stole the store gun from him. And

1 then you know that the store gun ends up in Donnie  
2 Smith's car at the site of the car crash after the  
3 high-speed chase. So you have the robbery.

4 Now, how did Abid Stevens help, and did  
5 Abid Stevens intend to help? You know that moment  
6 after Maurice Quinn leaves the store. You know what  
7 Emmanuel Sanchez said. Abid Stevens is screaming at  
8 Joel Ventura, "Oh, you're going to pull a gun? You're  
9 going to pull a gun? You're going to pull a gun on my  
10 family?" 44 seconds later, after going out of the  
11 store and coming back, he comes back with a gun. He's  
12 acting as crowd control with Emmanuel, and then he's  
13 physically advancing on him in the corner, training  
14 his gun on Joel Ventura's chest to make sure that  
15 Donnie Smith can get that gun. That's knowing what  
16 was going on, intending to help, and then actually  
17 helping, making sure that the gun was taken. There he  
18 is helping Donnie Smith with that gun. But for him  
19 trained on Joel Ventura in that moment, Donnie Smith  
20 can't take the gun.

21 Same thing for Maurice Quinn. You heard  
22 what happened. You heard the quote it's -- that was  
23 being said that he said to Joel Ventura on the other  
24 side before he goes around the counter. You heard the  
25 threat, "I'll be back." And he does come back. He

1 comes back, and he comes back with his two buddies,  
2 and he's right there, again, same thing. He's making  
3 sure that Donnie Smith can achieve his goal. They're  
4 outnumbering three to one, three to two, if you count  
5 Emmanuel Sanchez. But look at where Maurice Quinn is  
6 the moment that Donnie takes the gun. He knew what  
7 was happening, he intended to help, and he did help.

8 With regard to the money -- we haven't even  
9 talked about the money yet. For Quinn, it's all about  
10 the money, right? How do you know it was all about  
11 the money for Maurice Quinn? It all starts with that  
12 scam. It starts with walking up to the counter with  
13 your fake \$20 bill and trying to buy cigarettes.

14 Look at those early escalation points. When  
15 Isalisa Rodriguez is on the phone saying, "We can fix  
16 this. I'm on my way over," he knows that the jig is  
17 up, so he's got to go around the counter. He's got to  
18 try to physically force Joel Ventura to give him the  
19 money. "Give me fucking money. Give me fucking  
20 money. Give me fucking everything, money. Give me  
21 fucking money. Give me Glock. Give me Glock. Give  
22 me gun. Right now. Right now." And remember, this  
23 is 22 days after the incident during Joel Ventura's  
24 Grand Jury testimony that he gave this quote. That's  
25 what Maurice Quinn wants. You know Maurice Quinn's

1 intent. You know his intent when he says, "I'll be  
2 back," and when he comes back.

3 Is it violent? Absolutely. Does  
4 Maurice Quinn ultimately get what he wants? Is the  
5 money taken? Yes.

6 Let's take a step back, though. Let's  
7 throw the entire scam out the window. We've heard --  
8 or there have been questions about -- I'm sorry, I  
9 think it was in opening statement, Ms. Meehan told you  
10 that this wasn't a taking, because he was entitled to  
11 the money. So let's throw the scam out for just a  
12 second.

13 Let me give you an example. Let's say  
14 I go to the PNC later today, PNC Bank down the street,  
15 I use the ATM in the vestibule, I take out \$100, and I  
16 only get \$80. I can't get two buddies, bum rush the  
17 store, strangle the teller, put guns to their head,  
18 and take \$20 out of the cash register. It's my money,  
19 I'm entitled to it, but I can't do that. The law  
20 doesn't permit it.

21 Regardless of whether or not the scam  
22 was real or fake, or whether or not he got fake money,  
23 although, again, I ask you to use your common sense  
24 when you look at those bank records, that's not what's  
25 happening. You can't do that. You can't run into a

1 bank and take money from the cash register.

2                   How do we know that Abid Stevens is  
3 helping? How do we know that he knows about the  
4 money? Again, he's standing on the other side of the  
5 counter at the moment that that quote happens. He's  
6 originally there, he comes in, Quinn's behind the  
7 counter. "Give me fucking money. Give me fucking  
8 money." That's what's happening right in that moment.  
9 You know that he knows about the money, and you know  
10 that he's going to help his friend. You know that he  
11 goes and says, "All right, you're going to pull a gun  
12 on my friend? You're going to pull a gun on my  
13 friend, my family?" Goes, gets the gun, comes back,  
14 he's there to help Maurice Quinn.

15                   It doesn't matter that he isn't getting  
16 any of the money, and it doesn't matter that he stays  
17 later on, given that that's his only choice when he  
18 knows that they have made a very bad decision. What  
19 matters is what he was thinking in this moment. What  
20 matters is when -- what he was thinking the moment  
21 that he came back into this store with a gun. He's  
22 there to help his friend. He does help his friend,  
23 and Maurice Quinn walks out of the store with the  
24 money. Again, crowd control, he's helping. He is  
25 acting as an accomplice in this moment.

1                   How do we know that Donnie Smith  
2                   intended to help Maurice Quinn? Not only does he --  
3                   the timing of the outside cameras, the running to the  
4                   right, two seconds later, Donnie Smith's running to  
5                   get a gun, and then he's immediately inside the store,  
6                   but he helps Quinn get that money by taking the gun  
7                   from Joel Ventura. Once the store gun is out of the  
8                   equation, it allows Maurice Quinn to go behind the  
9                   counter and attempt to get that money. But you also  
10                  know from Donnie Smith's own words, when he's on the  
11                  other side of that counter, when Maurice is back there  
12                  with his hands over his -- with his sweatshirt over  
13                  his hands, so he won't leave fingerprints or DNA  
14                  behind, we know what Donnie Smith is saying on the  
15                  other side of the cash register. Donnie Smith is  
16                  saying, "Take it all. Take it all." His intent is  
17                  clear from his own words, and he obviously helped by  
18                  taking the gun.

19                  Count II that you're going to see in  
20                  the indictment -- well, actually, let me take a step  
21                  back. What I just explained to you are a bunch of  
22                  different theories of liability. What you're actually  
23                  going to see on your verdict form is: are each of  
24                  these individuals guilty of Hobbs Act Robbery as  
25                  either an abettor or guilty of Hobbs Act Robbery? You

1 can find any one of the ways that I just explained to  
2 you. As a principal, Donnie Smith taking the gun,  
3 Maurice Quinn taking the money, or as an aider and  
4 abettor. They're equally guilty. You'll see one for  
5 each of the Defendants, and you are supposed to check  
6 yes.

7 Count II, using or carrying a firearm  
8 in connection to a crime of violence. It is what it  
9 sounds like. It's having a gun out, and it's using it  
10 in connection to the robbery.

11 The Judge is going to instruct you on  
12 the definition of a firearm. He's going to tell you  
13 that a firearm is anything that's readily capable of  
14 firing a projectile. What he's not going to tell you  
15 is that you need some sort of functionality test or  
16 results of a functionality test to know whether or not  
17 these were firearms.

18 He's going to tell you that the same  
19 set of principles, direct and circumstantial evidence,  
20 apply the element of a firearm in this case, that you  
21 can use circumstantial evidence to determine that  
22 these guns are real. You can use the video in this  
23 case. You can use pictures of the gun. You can use  
24 the real gun. We know for sure this gun was test  
25 fired, what this looks like in comparison to those



1 guns.

2           You can used the testimony of Joel  
3 Ventura, who was too inches away from that gun, two  
4 inches away when Donnie Smith had it pointed in his  
5 face, a foot away when Abid Stevens has that gun  
6 pointed in his face, and Joel Ventura testified, he  
7 told you that he's familiar with guns, and that he  
8 absolutely thought those guns were real. Same with  
9 Emmanuel. You can look at these photos for yourself,  
10 and again, you can compare them to the real gun.

11           You know what you can also consider?  
12 Think about how they're using them. Think about how  
13 these individuals held and handled these guns. Were  
14 they handled like fake guns, or were they handled like  
15 real guns. Look at the way that Abid Stevens, earlier  
16 on when he first comes in. Do you remember when he's  
17 got that gun pointed down at the ground? He's being  
18 cautious with it. Is there a reason to be cautious  
19 with a fake gun? There's no reason to put your finger  
20 on the trigger of a fake gun.

21           And when Donnie Smith gets that store  
22 gun, the gun that I just showed you, the gun that we  
23 are absolutely certain, functionality test this, one's  
24 real, when Donnie Smith gets this gun, he puts it in  
25 his right pocket, and then he continues to use that

1 gun in his left hand. If you're using a fake gun and  
2 you just picked up a real gun, why keep using the fake  
3 gun? And we know in this moment, that's when he came  
4 back at him. That's when he came back at Joel  
5 Ventura. We know that that other gun's in his pocket.

6 Look at these pictures. Compare the  
7 guns, consider the testimony, consider the video,  
8 consider how it was handled and held.

9 And one more thing. Why pass off a  
10 fake gun? Abid Stevens hands off his gun to Maurice  
11 Quinn before police arrive. If it's a fake gun, why  
12 are you handing it off to your friend? And then  
13 Donnie Smith, he leaves a real gun in his car after he  
14 bails out after the high speed chase. That's a \$700  
15 gun. You heard from Isalisa Rodriguez. It's a \$685  
16 gun. You don't accidentally leave behind a real gun  
17 and take a fake gun. Those guns are real.

18 You're also going to be asked whether  
19 or not they were brandished, and you'll see a  
20 definition in the jury instructions. What that means  
21 is were the guns used in a way to intimidate someone.  
22 I'm not going to show you the picture again, but come  
23 on, the guns are, two of them, in Joel Ventura's face,  
24 being used to intimidate him in that moment. The gun  
25 is being held at Abid Stevens' side to hold Emmanuel

1 back, being used to intimidate him.

2           You haven't heard me talk about Maurice  
3 Quinn with regard to this element yet. We know that  
4 Maurice Quinn isn't carrying the gun until the moment  
5 that he takes the gun from Abid Stevens. But the law  
6 is smart. The law is based on common sense. The law  
7 recognizes if you join up with a bunch of people to go  
8 commit a crime and they're carrying guns, you don't  
9 get off the hook just because you didn't have one, as  
10 long as you knew that the guns were going to be used.

11           So with Maurice Quinn, what you have to  
12 consider is whether or not he had advanced knowledge  
13 of the guns. I want to explain what "advanced  
14 knowledge" means. Advanced knowledge doesn't mean  
15 before he walked back into the store that second time.  
16 Advanced knowledge means at the moment or at a moment  
17 that he had the opportunity to do something about it,  
18 that he had the opportunity to walk away from the  
19 criminal venture.

20           If you look at the video, if you look  
21 at the video at the moment that Donnie Smith comes in  
22 and pulls out his gun, Maurice Quinn is the one that  
23 is the closest to the exit. He's the closest to the  
24 exit, and he can leave at any time. When Abid Stevens  
25 comes in and pulls out his gun, Maurice Quinn actually

1 goes for it. If you look at the video closely enough,  
2 it looks like he wants to control the gun, not in a  
3 way, like, "I didn't know you were using a gun," like  
4 in the way that he wants the gun for himself in that  
5 moment. But he's the one that's closest to the door.

6 And then they advance on Joel Ventura.  
7 They advance on him, they advance on him, they advance  
8 on him, and those guns are out the entire time.  
9 Maurice Quinn never leaves, never makes a move to  
10 leave.

11 And think about when that money is  
12 actually taken. We're talking about minutes later.  
13 We're talking about minutes, and every single second  
14 of one of those minutes was an opportunity where  
15 Maurice Quinn knew guns were being used, and he had  
16 the opportunity to leave. Nobody's holding a gun to  
17 his head. Nobody's preventing him from leaving. He  
18 had advance knowledge that those guns were going to be  
19 used.

20 I know we've talked about a lot of  
21 theories of liability, but there's just one more. The  
22 Judge is going to charge you on conspiratorial  
23 liability, a conspiracy. Everyone's heard of  
24 conspiracy. And at the end of the day, what it really  
25 means is if you find that these three individuals had

1 an agreement, and I'm not talking about a written  
2 contract, I'm not talking about blueprints or  
3 schematics in "Ocean 11," I'm talking about whether or  
4 not they had an agreement, a mutual understanding,  
5 spoken or unspoken, at the moment that they walked  
6 into the store, at the moment that they're cornering  
7 Joel Ventura, to accomplish a common objective, to  
8 take that gun from Joel Ventura. You can find them  
9 guilty of all of these crimes on the basis of  
10 conspiracy.

11 Again, remember, these are a menu of  
12 options. These are all of the different ways that the  
13 law holds individuals responsible.

14 I want to talk about one more  
15 instruction that you're going to hear before I sit  
16 down, consciousness of guilt. The Judge is going to  
17 give you an instruction that you can consider the fact  
18 that Donnie Smith fled from police as consciousness of  
19 his own guilt. But there is more than just the flight  
20 from police, with regard to all three of the  
21 Defendants, evidence that you can consider that they  
22 knew what they were doing was wrong.

23 With Donnie Smith, it starts out with  
24 the moment that the sirens happened. This is equally  
25 applicable to Maurice Quinn. That's the moment that

1 he's dragging him out of the store, because they hear  
2 the police are coming. But then we all know what  
3 happens next. We all know what happens when Donnie  
4 Smith starts to go to his car. Officer Ferreira is on  
5 his way at this point, and he told you he had lights  
6 and sirens going, but that he turns them off. You're  
7 going to see Donnie Smith start to jog. There he is.  
8 He's running to his car, because Officer Ferreira is  
9 zooming up Sharpnack Street the wrong way.

10 Donnie Smith doesn't make a move to  
11 leave. He doesn't take off in that moment. He's  
12 sitting there. He's got to be watching Officer  
13 Ferreira, who gets out of his police car now, and he  
14 starts heading toward R.D. Grocery, and but for the  
15 operators at the Real Time Crime Center, who have this  
16 video pulled up, we'd never know that Maurice -- or  
17 that Donnie Smith's in that car.

18 But remember Police Officer Ferreira  
19 testified he gets that radio alert from Real Time  
20 Crime that there possibly a suspect still on location  
21 in that dark-colored vehicle. Donnie Smith has to  
22 have been watching him this whole time, sees him come  
23 up on the passenger side, or if not, he's certainly  
24 seen him by now, through the front windshield, that's  
25 when Officer Ferreira sees Mr. Smith in the car. He

1 goes around to the side. Donnie Smith doesn't open  
2 the door, he doesn't roll down the window, so Officer  
3 Ferreira tries to get him out of the car. And that's  
4 the moment that Donnie Smith chooses to take off,  
5 dragging Officer Ferreira a few feet along the way.  
6 But for that officer behind him, who knows if it  
7 actually would have turned into a high speed chase.

8 But we all know how that chase ended.  
9 It ends not too far away. Donnie Smith has crashed  
10 the car, and we heard a lot about this car. We know  
11 it's Donnie Smith's car, he's stopped in it seven days  
12 before, a 2010 Ford Taurus with New Jersey temp tags.  
13 And if that's not enough, you know that the  
14 Complainant -- the store gun is in the car, and you  
15 know that that Legend hat -- the black Legend hat that  
16 you see in the video, that that's in the car.

17 Why does the car matter? Why do the  
18 details of the car matter? Because Donnie Smith calls  
19 911 at 5:43 p.m. and attempts to put a recorded alibi  
20 on the record for himself. He attempts to say that an  
21 unknown assailant stole his car, took off from police.  
22 So this isn't just he made a bad decision in the  
23 moment to flee from police. He has 50 minutes after  
24 the robbery, 50 minutes, probably 40 minutes after he  
25 crashed the car to think about how he's going to get

1       himself out of this.

2                       How do you know that it's Donnie Smith  
3       on that 911 call? You saw the Dante Smith cell phone  
4       records. First of all, Dante Smith, we know they're  
5       prepaid records. We know that you can use any name.  
6       Mr. Sierra from T-Mobile testified to that. But you  
7       also have the contacts on those phone records.

8                       Remember 50 calls between Dante Smith  
9       number and the Carlene Webster number, Donnie Smith's  
10      wife. And that's in the four days on either side of  
11      the robbery, 50 contacts. Seven calls between them  
12      the night of the robbery, just after the robbery,  
13      between 5:07 and 5:29 p.m. That's Carlene Webster and  
14      Donnie Smith -- Dante Smith having communication.

15                      We know that there are seven contacts  
16      in those four days with the Maurice Quinn phone  
17      number, that phone number that was stipulated to. And  
18      then we know, at the moment right before and after the  
19      911 call, we have multiple calls between the Dante  
20      Smith number and Charlene Webster, Donnie Smith's  
21      wife. And then just five minutes after the 911 call,  
22      we have an incoming call from Maurice Quinn. The  
23      Dante Smith phone number, those phone records, they  
24      belong to Donnie Smith.

25                      And if that's not enough, look at the



1 time line of the 911 call, 5:43 p.m. And then all  
2 those dispatch calls I played for you. 5:57 p.m., the  
3 dispatch officer, the police on the scene say, "Hey,  
4 we went out there, no Complainant on scene about that  
5 car." 5:58 p.m., supervisor tells the officers on the  
6 street, "All right. I'll call that caller back." And  
7 it's at 6:00 p.m. in those Dante Smith cell phone  
8 records that there is a two-minute incoming call from  
9 (215) 686-3128, which Miss Cordallis (phonetic)  
10 testified is 911 dispatch, a two-minute call where 911  
11 dispatch calls back the Dante Smith phone number.  
12 Says he'll return to the location, and then we know no  
13 caller on scene.

14 Listen to the details that he gives  
15 about that car.

16 (Audio plays)

17 DISPATCHER: Friday -- 2019, 1743 and  
18 36 seconds.

19 MR. SMITH: What?

20 DISPATCHER: Philadelphia Police Radio  
21 Dispatch. (Indiscernible - 10:49:54.)

22 MR. SMITH: How you doing, ma'am?  
23 Somebody just jumped in my 2010 maroon car. Some kind  
24 of commotion was going on on Sharpnack and Ross, and  
25 whoever the assailant was, I'm not even sure what

1 happened.

2 DISPATCHER: Where are you at?

3 MR. SMITH: Where am I at?

4 DISPATCHER: Yes.

5 MR. SMITH: I'm on Chew and Sharpnack.

6 I had to walk --

7 DISPATCHER: Chew and Sharpneck?

8 MR. SMITH: Yeah. I walked down the  
9 block to get a pack of cigarettes.

10 DISPATCHER: All right. Somebody went  
11 in your vehicle and took it?

12 MR. SMITH: No, they took off.

13 DISPATCHER: In your vehicle, right?

14 MR. SMITH: Yeah.

15 DISPATCHER: All right. What type --  
16 what -- do you know your license plate?

17 MR. SMITH: It was -- I just got temp  
18 tags on it. I just bought the car. It's got New  
19 Jersey temp tags on it.

20 DISPATCHER: Okay. All right. Listen,  
21 I'm going to get the police out there as soon as  
22 possible. Did you see the person that went in the  
23 vehicle?

24 MR. SMITH: No. Actually, I was in a  
25 store.

1 DISPATCHER: All right. And let me ask  
2 you a question. Are the keys with the vehicle?

3 MR. SMITH: Yes, they were.

4 DISPATCHER: All right. No problem.

5 MR. SMITH: I stopped to get a pack of  
6 cigarettes there. But I didn't -- I seen some  
7 commotion, but I didn't pay no attention to it.

8 DISPATCHER: No problem.

9 (Audio stopped)

10 MS. MARTIN: Donnie Smith was the  
11 commotion. And then he spent 50 minutes after  
12 crashing his car thinking about how he can call 911  
13 and try to come up with an alibi for himself, try to  
14 come up with an unknown assailant that took his car  
15 and crashed it.

16 There's consciousness of guilt with  
17 regard to Maurice Quinn, as well. Again, it's --  
18 putting his sweatshirt over the hands. Those aren't  
19 the actions of a man that thinks that he's entitled to  
20 the money in that register. He wants to make sure  
21 he's not leaving behind fingerprints or DNA when he is  
22 pushing the buttons on that register.

23 You don't take your buddy's gun. You  
24 don't take a gun that's not real, first of all, but  
25 you don't take a gun from somebody if you don't think

1 that there was a problem with what you've done in this  
2 store. And you don't drag your other friend out of  
3 the store the second you hear police sirens.

4 There's consciousness of guilt with  
5 regard to Abid Stevens, as well, again, handing off  
6 that gun. No reason to hand off that gun unless  
7 you're concerned about what's going to happen when the  
8 police come.

9 And then you have the threats to  
10 Isalisa Rodriguez. The need to scream at a five foot  
11 two woman that you are going to shut down her store,  
12 that you own this block, that this is your  
13 neighborhood. Think about that. Isalisa Rodriguez  
14 lives above the store. You heard that. She's got two  
15 kids. He's threatening her livelihood in this moment,  
16 and she takes it seriously. What's more, not a single  
17 one of those individuals ever come back in the store  
18 ever again.

19 This was not a misunderstanding. This  
20 was a robbery. And at the end of closing, during the  
21 rebuttal closing, my co-counsel, Mr. Eckert is going  
22 to address you again, and he is going to ask you to  
23 return the only verdict that's supported by the  
24 evidence in this case, a verdict of guilty on all  
25 counts.

1 THE COURT: Thank you. Mr. Patterson.

2 MR. PATTERSON: Thank you, Your Honor.

3 (Pause)

4 MR. PATTERSON: May it please the  
5 Court, counsel, ladies and gentlemen of the jury, with  
6 the jury's indulgence, I just want to get set up here.

7 (Pause)

8 MR. PATTERSON: I promise you this is  
9 the level of technology I'll be using today, if it  
10 works.

11 (Pause)

12 MR. PATTERSON: Okay. Now, when you  
13 heard from me five and a half days ago on Monday, a  
14 week from today, obviously, it was an opening  
15 statement. I told you what an opening statement was.  
16 I'm not going to go through the whole thing again, but  
17 I was clear with an opening statement is what I think  
18 that the testimony and evidence is going to show, and  
19 what I think that the evidence and testimony is going  
20 to show, because obviously, I have some discovery that  
21 the Government gives me, so I have the knowledge of  
22 what's there. But then I haven't heard any of the  
23 testimony, nor have you, has the jury heard it.

24 The closing is much more important,  
25 though, opening statement versus a closing argument.

1 Closing argument is now I get to get up and say, "Yes.  
2 See, I told you six days ago -- a week ago that I was  
3 right what the evidence showed, what the evidence  
4 didn't show."

5 And as I said in my opening, I am here  
6 for one person and one person only. I am here for  
7 Donnie Smith. I am Donnie Smith's attorney. My  
8 opening statement is related to Donnie Smith, and my  
9 closing argument is going to relate to Donnie Smith.  
10 Now, there are two other actors present in the  
11 courtroom. They have their own attorneys. So I,  
12 typically, will tend to not use their names. I'll  
13 focus on my client unless, obviously, there will come  
14 appoint in my closing where I may have to mention  
15 somebody.

16 The other thing about a closing  
17 argument that's important is that what I say now --  
18 what I say in the next 40 minutes, and what the  
19 Government just said for the last hour, is that -- I'm  
20 starting my timer right now, so excuse me. What I say  
21 is not evidence. You've heard the evidence. You've  
22 heard the testimony. And you heard -- you will hear  
23 the Judge's instructions. And it's my interpretation  
24 of the evidence.

25 If my notes -- and this is important.

1 If my notes and what I say now is different than what  
2 you remember and what's in your notes, your memory and  
3 your notes rule. Doing that -- doing these type of  
4 trials, very fluid, a lot of stuff going on. I've got  
5 to listen to what the Government is asking. I have to  
6 listen to what the witness is responding to. I've got  
7 to think of what I'm going to say on a cross or a  
8 recross. I might miss something or I might misstate  
9 something, or it might not comport with what you have  
10 or what you remember and what you've written down.  
11 Your facts, your memories, your notes rule. This is  
12 not my job to mislead you. This is my job to recount  
13 the evidence as I remember it and as I heard it.

14 Now, I do this a little differently. I  
15 have notes I prepared. There is a lot of things that  
16 I want to point out, so I will reference my notes  
17 every once in a while.

18 Burden of proof, His Honor, we have  
19 some instruction -- preliminary instructions before  
20 this started regarding the burden of proof. The  
21 burden of proof in a criminal case is the highest  
22 burden that there is in the -- in a criminal trial in  
23 Federal Court. It is beyond a reasonable doubt. Now,  
24 again, His Honor will give you the jury instructions  
25 when we're all done with this closing stuff.

1                   Now, I do know that there is one word  
2                   that you're going to hear from me right now, and  
3                   you're going to hear from His Honor again, what His  
4                   Honor reads you with respect to the definition of a  
5                   "reasonable doubt," that's what rules for your  
6                   deliberations.

7                   There's one common word, and that is  
8                   "hesitate." In State court, they define the type of  
9                   doubt as the type of doubt that you would make a  
10                  reasonable, prudent person hesitate before acting on a  
11                  matter of importance in their own affairs. Federal is  
12                  a little bit different, and again, His Honor will read  
13                  you exactly what it is. The word is "hesitate."

14                 When you are deliberating this case --  
15                 when you're looking back at the evidence and the  
16                 testimony, and you're comparing that and trying to fit  
17                 that into the jury instructions, the law to apply, to  
18                 determine whether they satisfied the burden beyond a  
19                 reasonable doubt, the question is will you hesitate.  
20                 Now, when I get done with my closing, I'm going to  
21                 suggest that you'll be hesitating a lot.

22                 There's other instructions, and we  
23                 focus this on voir dire. Voir dire, again, is just to  
24                 get a jury that's going to decide this case on three  
25                 things: evidence, testimony, and judge's instructions.



1 There's also other things that were in your -- that we  
2 asked questions, a lot questions with respect: does  
3 anybody have any issue with the Defendant's right to  
4 remain silent. That is a right in our Constitution  
5 that a defendant does not have to testify. And the  
6 Judge will read you a jury instruction at the end, and  
7 he will tell you specifically you may not -- you may  
8 not draw a negative inference for the mere fact that  
9 somebody decided to exercise their Constitutional  
10 right to remain silent. So please take that into  
11 consideration, and please follow that instruction.  
12 It's very important in a case such as this.

13 Now, there's also going to be a jury  
14 instruction that's called justification. Now, this  
15 jury instruction only pertains to Donnie Smith. The  
16 jury instruction is justification. There's a lot of  
17 jury instructions, so it's down towards the bottom,  
18 but just wait for it, and you'll hear it.

19 The Government has to prove beyond a  
20 reasonable doubt that everything that they just said  
21 in the closing actually happened, that the robbery  
22 happened, that there was a conspiracy, that they  
23 brandished the firearm. They have to prove all of  
24 those elements beyond a reasonable doubt, again, the  
25 type of doubt to make a reasonable, prudent person

1 hesitate before acting on an important matter.

2 Justification -- now, I'm going out of  
3 order with respect to this -- my closing, because I  
4 think it's -- sequentially, it kind of leads to where  
5 I want to get to the end. Justification also has a  
6 burden of proof. If, and only if, the Government  
7 proves each and every element beyond a reasonable  
8 doubt, then the burden -- it's very unusual that a  
9 burden would shift to a Defendant -- to Mr. Smith --  
10 but that burden is by preponderance of the evidence.  
11 That's the lowest standard in the law, reasonable  
12 doubt, highest standard, preponderance, lowest burden.  
13 And the Judge will describe -- His Honor will describe  
14 what that burden is and how to visualize it, look past  
15 the words, and he'll tell you how and what it is.

16 But preponderance of the evidence is a  
17 scale, you know, the lady justice with the -- not a  
18 digital scale, a regular, old-fashioned scale. You  
19 put two pennies on it, they stay even, and they don't  
20 go anywhere. That means that we did not prove a  
21 preponderance that my client was justified in doing  
22 what he did. Now, you throw a dime on there. We  
23 throw a dime on there. It sinks down a little bit.  
24 That's a preponderance of the evidence. If you think  
25 that that scale sunk down a little bit on our behalf,

1 then you can find Mr. Smith not guilty. And this is  
2 in your jury instructions. I'm not making it up. It  
3 stays even, we don't satisfy our burden. You put that  
4 dime on the other side, the Government's side, it  
5 weighs down there. Again, we didn't satisfy our  
6 burden. Now, obviously, I am going to tell you here  
7 that it's my belief, when I get towards the end of  
8 this, that he did satisfy our burden beyond a --  
9 preponderance of the evidence.

10 And before I start talking about  
11 justification, again, I'm out of order on this, but  
12 I'm going to tell you where I'm going to end up in a  
13 few minutes. You do not even get to the justification  
14 instruction, only if the Government proves beyond a  
15 reasonable doubt each and every element that they're -  
16 - that my client, Donnie Smith, is charged with.

17 Now, of course, I would submit that  
18 they'll never do that based upon the evidence as you  
19 heard it, based upon the testimony, based upon the  
20 videos, and particularly the videos, when you compare  
21 that to the Judge's instructions.

22 Now, there are four elements for a  
23 justification. To cut this down, I'm just going to  
24 talk about the first one, and then the Judge will read  
25 the other three elements, and you can -- they kind of

1 flow from the first one, which is the most important.

2 Donnie Smith was under an immediate  
3 unlawful threat of death or serious bodily injury to  
4 himself or others. Now, "others" is a biggie here, to  
5 himself or others, meaning him and his wife. It was  
6 uncontroverted and unequivocal that she was in the  
7 store when this happened.

8 And the other thing that we do know for  
9 our burden to tip the scales no matter how slightly,  
10 we do know some things. We know that the store owner  
11 -- I'm going to refer to him as Joel. He had -- his  
12 first -- his formal name is a little bit different,  
13 but Joel Ventura. He had a loaded gun. Mr. Quinn  
14 didn't have a loaded gun. Mr. Quinn didn't have  
15 anything. The only two people in the store before  
16 this all happened -- this is in the video, was Mr.  
17 Quinn and Joel. Joel pulled a loaded gun.

18 So knowing -- and that's a loaded,  
19 functional gun, and I'll get to what my client had in  
20 his hands a little bit later on, but we know that that  
21 was a loaded, functional gun that can fire a  
22 projectile and kill somebody. And the expert said it  
23 was loaded -- not loaded, strike that -- that there  
24 was eight rounds when he got it from the Philadelphia  
25 Police Department.

1                   A lot of hay was made about this semi-  
2     automatic weapon with Mr. Ventura, he's the -- he was  
3     the store owner. And then you had Mr. Sanchez. He  
4     was there for three days, and he's the cook, I think.  
5     A lot of stuff was said -- was there a round chamber  
6     or wasn't there a round chamber? I asked questions,  
7     my colleagues asked questions, and do you know why  
8     that's important? Because the only game in town that  
9     day with a loaded gun who could kill somebody was Joel  
10    Ventura.

11                   "I took it out of the cubby, and I just  
12    kept it down at my side." And I asked and everybody  
13    else did, "Did you chamber a round?" "No, I didn't  
14    chamber a round."

15                   Okay. So we played the video. We kept  
16    playing it over and over and over again, and I think  
17    you can see it. Again, your recollection rules in  
18    this -- in my closing argument. He had the gun here,  
19    and you see the video. And I'll do it from the  
20    standpoint that you saw it. The video is, like,  
21    behind him, and you can see something here, and you  
22    see this, real quick. I played it a lot. You see  
23    that and you see this.

24                   Now, when we had two people, one a gun  
25    expert, who's tested functionality on tens of

1 thousands of firearms, and the other officer, who is  
2 not trained -- he said he's not trained, and he didn't  
3 have any expertise in the function of guns, but he's a  
4 detective. He's dealt with guns. Each one of those  
5 confirmed that that movement that I described to them,  
6 and to you, and for the record of my left hand going  
7 real fast over my right hand is consistent with  
8 somebody chambering a round.

9 Now, Mr. Ventura says, "No. I didn't  
10 do that." But what does the evidence show? I will  
11 submit for the jury's consideration, Mr. Ventura  
12 locked and loaded that functional gun, and he was  
13 ready. He was loaded for bear. And it's important  
14 for the defense of justification.

15 I also was the only attorney that just,  
16 kind of, asked a few questions of the one patrolman  
17 about chain of custody. You know, when you see a  
18 piece of evidence, you don't disturb it, you leave it  
19 where it lies. Somebody will then come in and take a  
20 picture of it. Once they take a picture of it, an  
21 officer will then handle the gun with latex gloves.  
22 He will make sure that it's not -- does not have a  
23 chambered round, because it's going to be bagged and  
24 tagged, put into an evidence bag, and sent off to a  
25 crime lab somewhere.

1                   Unfortunately, in this case, the  
2     officer -- and I am totally cool with that, he  
3     probably -- he just -- he was honest, "I don't  
4     remember if there was a round chambered," not that  
5     there wasn't, he doesn't remember. So again, look  
6     back to the evidence of what you saw Joel Ventura do,  
7     and what the two officers said is consistent with  
8     somebody chambering a round.

9                   That gun was loaded. That gun could  
10    have killed Donnie Smith, and that gun -- not the gun.  
11    What am I saying? Joel Ventura could have killed  
12    Donnie Smith. And Joel Ventura could have killed his  
13    wife. You can speculate all you want about these  
14    other "guns," quotation marks, that my client had.  
15    Can you get there to the same level as you can get  
16    there, that Joel Ventura had a functioning gun that  
17    was locked and loaded?

18                  It's an element of the offense. A  
19    firearm is defined in the jury instructions. You've  
20    got to read that definition and apply it to the facts.  
21    It's an element of the charge that is -- that the  
22    crime that's charged here.

23                  Now, what I forgot to say in my  
24    opening, in my closing, rather, is that you can use  
25    the evidence and the testimony in relation to the

1 Judge's instructions, but you can also use your common  
2 sense, your life's experiences. I think when we were  
3 doing voir dire, when we were asking you questions,  
4 there was quite a few of you -- I don't know if any of  
5 you ended up on our jury, that you have a firearm, so  
6 you know how it's used. And again, you can draw upon  
7 your life's experience and your common sense with  
8 respect to that. But what you can't do in a criminal  
9 case, you can't guess, and you can't speculate.

10               You say, "Well, what's the difference?  
11 My common sense or guessing and speculating." I think  
12 there's a big difference. Your common sense, knowing  
13 how a gun is functioning, knowing that you go like  
14 this, and it was tested on a bench test by an expert,  
15 and it could fire, you don't need common sense.  
16 That's direct evidence. But can you get to what my  
17 client was holding? Can you jump across that chasm  
18 without guessing and speculating that that was a gun?

19               And the Government kept bringing up  
20 that it was fake gun. I'm not suggesting it was a  
21 fake gun. I'm not suggesting it was a real gun. I  
22 don't know what it is, because they didn't prove it.  
23 But even a gun -- a real gun, if you read the  
24 definition, it's got to be designed or easily  
25 converted to eject the projectile under the gun powder



1 or something. Even if it was a real gun, was it a  
2 functional real gun? Well, he may -- they could use  
3 circumstantial evidence to get to that point.

4 My position is -- and, again, it's up  
5 to you, you can't get to that point without guessing  
6 or speculating. Yeah, you can use circumstantial  
7 evidence on a lot of things. Again, you come in here,  
8 no windows, somebody's wet, it's raining out, they  
9 have an umbrella. Common sense. There's a lot of  
10 steps you've got to jump through, a lot of hoops  
11 you've got to jump through to use your common sense to  
12 say that that gun, whether real or not real, was  
13 functional, or it could be readily made functional, to  
14 eject a projectile. We're not there.

15 Oh, and brandishing a firearm? I'll  
16 get to this later. Brandishing, wave a gun around,  
17 point it, wave it -- not carrying it, wave it,  
18 carrying around. So then you can say, "Well, okay.  
19 Well, they didn't prove -- or I don't think they  
20 proved beyond a reasonable doubt" -- hesitate -- that  
21 what my client had was a functional gun, whether real  
22 or unreal, or whether it was plug in the barrel, or no  
23 firing pin, whatever.

24 The Glock that my client did take, I'm  
25 not going to come up here and spin a yarn. He took

1 the gun, because he was afraid for himself and his  
2 wife. He took the loaded, functional, operational,  
3 bench-tested Glock gun from the store owner, and he  
4 put it in his right pocket, and my client's a lefty.  
5 All over the video tape, my client's a lefty. The  
6 only gun that we proved beyond a reasonable doubt  
7 stayed in his right pocket and never left his right  
8 pocket. That gun was not brandished. Your  
9 determination, beyond a reasonable doubt, so you don't  
10 hesitate, is that the other one in his left hand he  
11 brandished, and it was a gun, as defined in the law to  
12 be applied to this case.

13 Now, the threat of death or serious  
14 bodily injury to Donnie Smith and his wife. This is  
15 my other technology exhibit here. Now, this is,  
16 unfortunately, not going to flash up on the screen  
17 anywhere. This is it. Can everybody see it? Okay.

18 Again, like I said before, this is my  
19 interpretation of the video evidence that we've all  
20 seen. This is the time, and this is not the time on  
21 the bottom scroll of the computer, this is the  
22 embedded time stamp from the video that we can all  
23 see. And this is me looking at the video last night  
24 and writing down times, and who -- what's happening.  
25 Who's coming and going. So again, the time, beginning

1 at 16:52:50 and ending 16:55:56. And again, I am the  
2 attorney of Donnie Smith. I am not Mr. Quinn's and  
3 Mr. Stevens' attorneys. I didn't put their names in  
4 here. I put "Person A" and "Person B." You can  
5 determine who's who, but I am attorney -- Donnie  
6 Smith's attorney. I put his wife's name and his name  
7 in.

8 Now, look at this. There's a lot of  
9 comings and goings. The front door should have been a  
10 revolving door to keep the heat in, because people  
11 were coming and going so many times. And look at the  
12 sequence of events. 16:54:53, Smith's wife is in the  
13 store. She's the lady dressed in the Muslim garments.  
14 And during the stills that you just saw in the  
15 Government's opening, she's all over the place,  
16 uncontroverted that she's in the store without her  
17 husband.

18 So what happens? Almost a full minute  
19 -- 16:54:53 to 16:55:47, she's there alone. And if  
20 you remember the video -- again, this is my exhibit.  
21 I'm not going to flash up the video. We've seen it a  
22 hundred times. There's a point where Joel comes out  
23 around the cubicle with the Plexiglas, and he's got  
24 the gun here. Now, the gun is out. At one point, he  
25 puts it in his pocket, but the gun -- the loaded

1 functional Glock, eight-round gun is there.

2 She's right there waving around with  
3 some type of currency to buy something. She's there  
4 to buy something. He kept -- look, she's getting  
5 frustrated. She's like, "Here, I want to buy  
6 something." And he's right by where you stand -- Mr.  
7 Ventura, Joel, where you stand when you want to  
8 transact business through that cubicle, with a gun.  
9 Donnie Smith comes in. He does what any husband's  
10 going to do, takes his wife, takes his hand by her  
11 waist, and ushers her out.

12 Now, the Government had said, "Well,  
13 okay, now his wife is gone. So where is the threat of  
14 death or serious bodily injury?" He's still there  
15 with a guy with a gun. What does he do? He removes  
16 what appears to be a gun, and I'm just -- I'm just  
17 going to say "gun" in quotation marks, because it's  
18 just too much to say "object." Again, it's my  
19 submission; it's not proven. He removes his wife. He  
20 removes the threat of death or serious bodily injury  
21 to his wife, and then he pulls what the Government  
22 wants you to believe is an operational, functional  
23 gun.

24 What did Donnie Smith do then? I can't  
25 unmake the facts of this case. You know, if there's

1 not a nine -- eight, nine cameras trained on my client  
2 throughout the entire course here, I could put a spin  
3 on it and maybe say, "Well, you know, it didn't happen  
4 that way," but we know exactly what happened. We know  
5 exactly what my client did. There's a video of it.

6           You just saw it on the stills, he pulls  
7 what they purport to be a gun. But Mr. Ventura  
8 doesn't get his gun out. Then they start backing away  
9 from one camera angle to the next camera angle, and  
10 you'll see him in the camera again -- I'm sorry,  
11 (indiscernible - 11:17:54). Goes like this to try to  
12 get the gun to disarm him. He doesn't get the gun  
13 out. So then my client puts his gun around, points it  
14 at the floor, and this is on the video. I'm not  
15 making it up.

16           Then they all start walking over to a  
17 little area where you can actually go back to where  
18 the cash register is. And again, he keeps going,  
19 like, with his right hand with the gun pointed down,  
20 he keeps reaching over, reaching over, reaching over.  
21 Still not getting the gun out. Then he gets his gun,  
22 and he points it, just like we've seen, that's when he  
23 points the gun to get the gun. I think like this, and  
24 he's reaching. But before that, the gun's down  
25 pointing at the floor. Takes the gun and disarms him.

1 That threat is over to his life.

2 Where does that Glock go? It goes in  
3 his right pocket, and that Glock is never seen again.  
4 Puts it in his pocket, walks out to where the patrons  
5 sit, and he stands there. Now, there's a question of  
6 whether he stood like this, as I asked three times of  
7 Mr. Ventura, or whether his hands were in his pocket,  
8 but either way, your recollection rules on that one.  
9 He never drew that Glock. He never drew the other  
10 gun, that was purportedly a functional, operational  
11 gun.

12 Mr. Sanchez -- again, this is when he  
13 disarms Joel Ventura of a loaded gun, and he's  
14 standing there. And I asked Mr. Sanchez about the  
15 cigarettes and, you know, all the stuff in the store,  
16 and transacting cash business. There's a lot of cash.  
17 He didn't know if there was store safe. And then I  
18 asked him about -- "Did my client take anything?"  
19 "No, he didn't. He didn't."

20 He could have taken -- "he could have  
21 cleaned you out." That was my words exactly. "He  
22 could have cleaned you out. Did he?" "No." He  
23 didn't do anything

24 So this is where the part of my closing  
25 with respect to justification ends, then I'll get into

1 the other stuff.

2 So once again, only if they prove their  
3 case beyond a reasonable doubt, which I submit that  
4 they cannot, that you reach the justification  
5 instruction. And it's my submission, my request, that  
6 based upon the evidence as you've seen, this is not  
7 secondhand account of a biased witness or an unbiased  
8 witness or a patron who just kind of happened to be  
9 there. This is on video.

10 Now, the elements of the offense, the  
11 Government already went through those. I'm not going  
12 to bore you with me doing it again. If you don't  
13 remember exactly what each element is, I'm sure my  
14 colleagues may mention it again in their closing, but  
15 you will have the elements to apply to the law when  
16 the Judge gives you the instructions.

17 There are two things that were  
18 allegedly taken that day, the \$100 and the Glock.  
19 I've already discussed the Glock. I already discussed  
20 my interpretation of the facts and the evidence and  
21 the video tape of why that gun was taken. The \$100,  
22 once that -- once Mr. Ventura's disarmed, the Glock  
23 goes in my client's right pocket, never to be seen  
24 again. He doesn't partake in anything with respect to  
25 stealing anything from that store.

1                   Now, video evidence. Sure, you have a  
2 lot of video evidence, I just said that, but there's  
3 no audio. So what the police did was they relied on  
4 what Mr. Ventura said to them. And the only really  
5 fact witnesses are, other than the store owner, for  
6 what happened, what transpired when this occurred was  
7 Mr. Ventura and Mr. Sanchez.

8                   Now, there is also a jury instruction  
9 called credibility that you can judge the credibility  
10 of the witnesses. I was a little harsh with Mr.  
11 Ventura, because he wasn't answering my questions. I  
12 admit it. But Mr. Sanchez, he was great. You asked  
13 him a question, he answered it.

14                   "Mr. Ventura, Hello. How's your day?"  
15                   "Oh, your client robbed me at  
16 gunpoint."

17                   It almost -- it wasn't that bad, but it  
18 kind of got to that point. But you have to judge  
19 their credibility, and that's in the jury  
20 instructions.

21                   But there are only two witnesses and a  
22 video tape with no audio. And those two witnesses  
23 work there. But did you notice the video, even in the  
24 stills that we've just seen in the Government's  
25 closing? There were -- and I counted this when I was



1 doing this -- there were three adult male men in that  
2 store. They were the ones that dropped the potato  
3 chips before they left. Where are their statements?  
4 It's a neighborhood store. I don't know. Does the  
5 Government know? If the Government knew what their  
6 statements are, they would have presented them today  
7 as corroborating evidence of the two witnesses who  
8 work in the store to say, "Yeah. That's what these  
9 guys said."

10 And the big one is the guy with the  
11 gray hoodie. If you look at the video, he is there  
12 from start to finish. He is there for a whole --  
13 almost the whole 23 minutes. Now, I think we can  
14 infer, based on what he's doing, he does not work  
15 there. He's seeing everything. He allegedly -- since  
16 he's standing right there when it looks like my  
17 client's saying something after this whole incident is  
18 done, when they're all just kind of hanging out with  
19 the store owner, he's right there. When Mr. Stevens  
20 is saying something to, you know, about what happened  
21 or whatever, I don't know. There's no witnesses to  
22 that effect. What did the police do?

23 Now, police work is -- what you do is  
24 you canvas the neighborhood. I didn't ask any  
25 questions about did you canvass the neighborhood,

1 because it's not my job. It's the Government's job to  
2 prove each and every element beyond a reasonable  
3 doubt. I don't have to prove my client didn't do it.  
4 I've got to prove -- I've got to show that they didn't  
5 prove it.

6 This is the Philadelphia Police  
7 Department. No canvassing? Did you try to get the  
8 identity of the three adult males that were in the  
9 store about what happened, who said what? What about  
10 the guy with the gray hoodie? What would he have  
11 possibly said that might help their case out? It  
12 isn't like we looked and we couldn't find him.  
13 Crickets. Silence, as to what the police did and did  
14 not do in this case.

15 And it's not just the Philadelphia  
16 Police Department, it's the Federal Government. We're  
17 in a Federal Government courthouse: the ATF, DEA, the  
18 FBI, the Secret Service, vast, vast resources to get  
19 you through the hump, to get you through your  
20 reasonable doubt, to get you through your "I might  
21 hesitate to say yes, this was a robbery, this was a  
22 conspiracy, this was an aiding and abetting, and my  
23 client had a real functional gun that he brandished."  
24 Nothing.

25 Now, one more thing. Nobody called

1 911. The three adult males that were there trying to  
2 buy something, they don't -- they're hear -- I'm  
3 assuming they're hearing this -- one of the  
4 individuals yelling and screaming about something,  
5 nobody calls 911. The guy in the hoodie who's seeing  
6 everything, based upon the evidence -- the video,  
7 rather, he doesn't call 911. Everybody's got a phone,  
8 and even if your phone -- as the one expert said, even  
9 if you didn't pay your bill that day, you could always  
10 call 911 on a phone as long as it's powered up.

11 And I made a big deal about this, and I  
12 think it's extremely important. Look at my exhibit.  
13 Look at everybody coming and going. You saw it on the  
14 video. I believe the Government said in their closing  
15 that, "You know they're outside talking." I think  
16 they said that. I hope they did. You know they're  
17 outside. Well, how do you know they're outside  
18 talking?

19 What if you got the video capture, or  
20 the camera that the owner asked her next door neighbor  
21 across the street that's directly pointing at the  
22 outside door of the entrance to the store, why didn't  
23 you get that? You know, it seems like, "Oh, he's  
24 just" -- "you know, he's talking in circles. He's  
25 making things up, you know, he's distracting me." No,

1 I'm not. I'm asking you is what the Government did to  
2 prove their case beyond a reasonable doubt so you  
3 don't have to guess and speculate.

4 Were they talking outside as the  
5 Government said in her closing? We don't know. Could  
6 we have known if they were talking outside or if they  
7 were even outside when Person A leaves, Person B comes  
8 in, Person A comes back, Person B leaves and then  
9 comes back later on? They're asking you to guess.  
10 They're asking you to speculate as to what happened  
11 outside.

12 Can you use your common sense to say,  
13 "Oh, well, it's common sense that they were outside,  
14 and they were all talking." That's a leap. That's a  
15 big leap. That's not the person coming in in a  
16 windowless room soaking wet. The camera was there.  
17 The store owner said she paid a company to put these  
18 cameras in. They were all functional, they were all  
19 operational, and the digital video recorder was  
20 recording every single thing for the entire time  
21 sequence that's relevant in this case. Nothing. No  
22 canvassing the area for potential witnesses, no  
23 finding out who the guy with the gray hoodie is, and  
24 not getting the camera that shows if anybody was doing  
25 anything outside, because -- nine times, comings and

1 goings out the front door, nine times.

2 Now the one officer said it was his job  
3 to put the thumb drive in, and the thumb drive that he  
4 put in the slot, and -- I'd like to take the whole  
5 machine with you, you put it under your arm and out  
6 the door you go. You don't do that. You put a thumb  
7 drive in, and they look, and say, "Okay. Well, he  
8 said, well I looked, and I saw what was relevant, and  
9 I took just those cameras."

10 But then he doesn't stop there. I  
11 think it was either him or somebody else. They go  
12 back to the precinct, now, and other people review the  
13 video. Now, if other people are reviewing the video  
14 in a controlled setting, not right at the store when  
15 -- right when this happened, now they're in a  
16 controlled setting, they all have the opportunity to  
17 sit down, have a cup of coffee, and look at it, and  
18 say, "Okay, what's relevant? How can we use this  
19 evidence to charge these people with a crime?"

20 Nobody in the Philadelphia Police  
21 Department notices that their coming and going out of  
22 the store nine times, and think, "Well, let's go back  
23 and get the camera for the outdoors?" This is --  
24 they're trying to prove a conspiracy, the Government.  
25 You know, one person takes money, then everybody takes

1 money. One person got a gun, everybody's got a gun.  
2 One person does something, they're all responsible  
3 based upon a law of conspiracy. Where is the evidence  
4 of that? I think there could have been a whole bunch  
5 of evidence, but we don't have it.

6 What if Person A goes outside, and  
7 nobody else is there. He walks up the other way, and  
8 down the other way, Person B comes into the store.  
9 These are scenarios that could have happened,  
10 absolutely could have happened, but they want you to  
11 guess, and they want you to speculate, and they want  
12 you to come back beyond a reasonable doubt, without  
13 hesitating, that there was a conspiracy here of an  
14 armed robbery. No evidence.

15 They had 20 days. They had 20 days  
16 before that DVR recorded the events of that day, and  
17 based upon the number of bytes it was recording, it  
18 started, then, rerecording. So they had 20 days of  
19 that evidence still being in that DVR that they could  
20 have went back, did their job, and got what you need  
21 to jump the bridge from hesitate to no hesitate. Not  
22 here.

23 And look, I'm not blaming the police.  
24 It's a hard job. But when you have a crime, do what  
25 you're supposed to do. Don't come in here later on, a

1 week, a month, a year, five years later, and ask a  
2 jury to make a leap of faith that this was a  
3 conspiracy when they didn't provide you everything  
4 that was in their control or could have been within  
5 their control had they have done their jobs.

6 This is real quick now. The robbery,  
7 unlawful taking by force, fear, again, I'm not going  
8 to beat a dead horse. I already said why my client  
9 has a gun. Whether you believe it or not, that's up  
10 to you, and that's for your determination. But that's  
11 my interpretation of the evidence. When, apparently,  
12 the money, the \$100 is exchanging hands, my client is  
13 on the other side where the patrons stand. He's not  
14 behind the counter when this interaction is happening  
15 between one of the individuals here and the store  
16 clerk. He's got his hands at his side or in his  
17 pocket.

18 Now, the Commonwealth -- or the  
19 Government said, well, he said, "Take everything."  
20 That's from the witnesses. If he said it, he said it.  
21 I don't know if he said it. That's for your  
22 determination. But if he's the only person in this  
23 store, uncontroverted, proved beyond a reasonable  
24 doubt, that had a loaded, functioning, operational  
25 hand gun, he didn't take anything when he could have

1 cleaned the store out, according to Mr. Sanchez.

2 I said the video is the Holy Grail. It  
3 could be the Holy Grail for the Government, it could  
4 be the Holy Grail for the defense, because, I mean,  
5 it's pretty much clear. You've got angles of  
6 everything, and it's bright, and it's fluid, and you  
7 can see everything. Look at it. Look at the people  
8 in the video. Look at Mr. Sanchez, look at Mr.  
9 Ventura, look at the store owner, I think Ms.  
10 Rodriguez. Do they look scared? What is their  
11 demeanor? Judge their demeanor when you look at that  
12 video tape? If this is a robbery, a strong-armed  
13 robbery -- look at everything. Look at the facts.  
14 Look at the totality of circumstances. Do they look  
15 like they just got robbed? They're just kind of  
16 hanging out. I think Mr. Stevens shook the hand of  
17 Mr. Ventura.

18 Mr. Ventura had a cell phone the entire  
19 time. Remember, he actually -- he's on the phone with  
20 the store owner, and he gives it to the other  
21 individual, and the other individual has a  
22 conversation, (indiscernible - 11:33:29) hear any of  
23 this, and he gives it back to him. He's got the phone  
24 the entire time, doesn't call 911. They didn't take  
25 his phone. Any of these people behind me, they didn't



1 stop anybody from leaving, to escape an armed robbery,  
2 fear of death, fear of injury. Just -- I'm asking you  
3 when you go back, just to look at everything. That is  
4 common sense. That fact is common sense.

5 Real quick, this is what I remember Mr.  
6 Sanchez testifying to. He confirmed there was an  
7 outdoor camera. He corroborated what the store owner  
8 said. Now, this is important, because they're trying  
9 to prove a conspiracy that these three people  
10 conspired to do this robbery, to steal stuff. I wrote  
11 down, and I put it in quotes -- again, this is the  
12 pitfalls in closing. I'm not trying to mislead you,  
13 but I remember that Mr. Sanchez testified that Mr.  
14 Stevens said, "Why, why, why? Why is this all  
15 happening?" If you're in a conspiracy to steal stuff,  
16 would you be asking "why" three or four times? Like  
17 what is going on here?

18 And again, I have another -- somebody  
19 saying it to Mr. Sanchez, and Mr. Sanchez testified to  
20 this, hopefully, if my notes are right, "All this for  
21 \$100," like you're pulling guns, and you're doing all  
22 this for \$100. Are those statements alone the  
23 statements of a conspirator in an armed robbery, if  
24 they were said? It's just another piece, another  
25 piece to help you prove, or not prove, or reach a

1 conclusion that the Government didn't prove each and  
2 every element beyond a reasonable doubt.

3 Again, I recall the testimony of Mr.  
4 Sanchez stating, specifically, he testified this -- it  
5 was -- he did not think it was a robbery. And again,  
6 if my notes are correct, again, I defer to what your  
7 notes say, I believe Ms. Rodriguez testified that, no,  
8 this was not a robbery. They did not think it was a  
9 robbery. And that fits into what you see in the video  
10 tape of their demeanor afterwards.

11 Now, one other thing, for a robbery, it  
12 could be the use of force or the threat of force.  
13 Nobody threatened anybody. Nobody threatened anybody.  
14 I'm almost done. No threats.

15 Okay. Now, I had brought up flight as  
16 consciousness of guilt in my opening. I said that,  
17 which I usually don't do, because you don't want to  
18 give too much, because they're going to have that in  
19 their minds, like, "Oh, God, flight is consciousness  
20 of guilt." Why would you ever say that before the  
21 jury started? Because it doesn't matter in this case,  
22 and I'm going to tell you why real quick.

23 This is a quick aside. I had a case in  
24 State court where my client, he was probably, like 81,  
25 82, years old. The police responded to his home. He

1 was -- he and his wife were estranged. He was living  
2 someplace else, and they go into the home on a welfare  
3 check, and she's now deceased. They run a check on  
4 the plate number of my client and his credit cards and  
5 where he could possibly be, because he wasn't at his  
6 place, which is -- he was, like -- he lived close by.

7 Do you know where he was the next day?  
8 In Utah. And I believe I said he was 82 years old.  
9 He didn't happen to know anybody in Utah. He went  
10 from Pennsylvania to Utah in 24 hours. That is flight  
11 for consciousness of guilt.

12 And why I bring that story up is  
13 because who cares? It's all in the video tape. You  
14 know why my client was there. Do you need flight as  
15 consciousness of guilt when everything -- this whole --  
16 -- every action that he did is on video tape in nine  
17 cameras and shown to you for this jury trial? It  
18 sounds good for the Government, but does it matter?  
19 When you go to a store to rob it -- and by the way, I  
20 think the store owner said he's been there ten years,  
21 she doesn't remember the Muslim man. She'd never seen  
22 the Muslim man. I know Mr. Ventura said he did, but  
23 the store owner said no, never been there before. But  
24 the Government wants you to believe that, "I'm going  
25 to go a store where nobody knows me, where maybe I can

1 rob them, because I'm not known," but he robs it with  
2 the two people that are at the store every day. One  
3 lives right up the street. Again, does this -- any of  
4 this make sense for a robbery? No attempt to conceal  
5 his identity. He's already with two people that --  
6 one lives right up the street.

7 And again, I stress that, because when  
8 you -- when an attorney stresses something during  
9 their cross-examination or direct examination, it's  
10 because they want to bring home a point at closing,  
11 which I'm going to do right now. This screen, which  
12 is -- it's much -- this is much larger than what was  
13 there at the store. That screen -- that monitor that  
14 shows the real-time capture, real-time live feeds, is  
15 prominently and proudly displayed in the area where  
16 all the patrons are.

17 Assuming that when my client is robbing  
18 the store at gunpoint, he's on video tape without a  
19 mask, with a black hat that has silver letters that  
20 says "Legend" on it, does any of this make sense?  
21 Does it make sense that somebody's got a loaded gun,  
22 my wife's in the store, now I'm in the store, and I'm  
23 going to disarm them? That makes sense, irrespective  
24 that I'm being recorded, irrespective that the two  
25 people that I'm with and I'm allegedly conspiring

1 with, have been in the store every day and live up the  
2 street.

3 The same thing -- and I see the word  
4 "conclusion." I'm going to get there real quick. The  
5 same thing with alibi. You've heard that the tape.  
6 Whether it's him or it's not him, my point is it does  
7 not matter when you look at all the evidence. So my  
8 argument for him fleeing and eluding, flight as a  
9 consciousness of guilt, same thing with the alibi,  
10 same thing. Who cares? You have all the evidence in  
11 the world you need for this. You have all the  
12 evidence in the world you need for this to come back  
13 with, I hope, a not guilty, but that's up to you.

14 So what he does afterwards, you already  
15 know what he did. You don't have to fill in the gaps.  
16 That instruction is a horrible instruction for a  
17 defense attorney when you have to fill in the gaps,  
18 like why my 82-year old client was in Utah the night  
19 after his wife was found deceased in her home.

20 In conclusion, I want to thank you very  
21 much for your time, and I can tell you're all paying  
22 attention. This was a relatively long case, and a lot  
23 of stuff you have to consider. I would ask you again,  
24 please, the Judge is going to tell you, and I'm going  
25 to implore you, decide this case based upon the

1 testimony, the evidence as it relates to the jury  
2 instructions, and your common sense, and your life's  
3 experience. Do not decide this case, as I believe the  
4 Government wants you to do, on guessing and  
5 speculating. I think there's way too many holes in  
6 this case that you have to -- and it goes well beyond  
7 common sense, and you have to guess and you have to  
8 speculate, and you cannot do that in a criminal case  
9 to see if they met their burden of beyond a reasonable  
10 doubt of whether you will or you will not hesitate.

11 My suggestion is when you get it all --  
12 the Judge gives you the case to go back and  
13 deliberate, you will hesitate, and if you hesitate,  
14 then I would submit for the jury's consideration that  
15 there's only verdict, and that would be not guilty to  
16 all the charges.

17 And I've got to do this as an aside,  
18 if, which I don't believe you can, you find beyond a  
19 reasonable doubt, then you go to the justification  
20 instruction for my client, Donnie Smith. And again,  
21 it's not that burden, it's a burden of preponderance,  
22 does the scales tip to one side or the other.

23 I would submit based on what I think  
24 the evidence showed, that's uncontroverted, where you  
25 don't have to guess and speculate, just based on what

1 the video is, and what they did and didn't do, and  
2 what the witnesses said and didn't say, that the  
3 scales would tip in the favor of my client. And if  
4 that is the case, then you'll come back with a "not  
5 guilty."

6 One more thing and I am done. I asked  
7 you this in my opening. I'm going to say it in my  
8 closing. Who brings their wife to a robbery?

9 Thank you.

10 THE COURT: Thank you. It's 22 minutes  
11 of 12:00, a little late for a mid-morning break, but  
12 we'll break now for 10 minutes, and then we'll hear  
13 from Mr. Wittels and Ms. Meehan. Michael.

14 THE CLERK: All rise.

15 (Jury out)

16 THE COURT: We're in recess for 10  
17 minutes, everyone.

18 (Recessed at 11:43 a.m.; reconvened at 12:04  
19 p.m.)

20 (Jury in)

21 THE CLERK: All rise.

22 THE COURT: Be seated everyone. Mr.  
23 Wittels, are you ready to proceed?

24 MR. WITTELS: I am. Good afternoon.

25 (Chorus of good afternoon.)

1 MR. WITTELS: I am Barnaby Wittels. I  
2 represent Abid Stevens. He's the gentleman in the  
3 plaid shirt right over there. You'll remember him  
4 from the video as the gentleman in the gray or white  
5 track suit -- sweats.

6 As I look at you, and I've paid  
7 attention to you over the three days you've heard  
8 testimony, I am reassured to have my client's fate in  
9 your hands. You've been attentive, you've taken  
10 notes, you've listened to both sides. I've noticed in  
11 the closings, you listened carefully to the Government  
12 and to Mr. Patterson, and I know you will accord me  
13 that same respect and attention, and I appreciate it.  
14 Mr. Stevens appreciates it.

15 One often wonders how it is that you --  
16 a jury can sit in judgment of another human being, but  
17 you should be reassured that people in this country,  
18 citizens, have been sitting where you sit since the  
19 founding of this country, not necessarily in this  
20 courthouse. And there have been changes over time.  
21 In the beginning, it was all white male property  
22 owners who sat on juries. Now we have women, people  
23 of color, people who rent as opposed to own, and  
24 they've been able to do this.

25 One of the remarkable systems -- things



1 about our system of justice is that jurors, everyday  
2 citizens, decide on questions of guilt and innocence.  
3 They sit as the judges of the fact, and they do it  
4 confidently, and they have done that, as I said, for  
5 centuries. So I know you'll be able to do this.

6 Excuse me while I get some water.

7 Now, I don't think I'll go as long as  
8 the Government did or Mr. Patterson. I'm old school.  
9 You can tell by my gray hair that I've been doing this  
10 for a while. I don't do audio-visual. I don't know  
11 how to do it. I can't do what Ms. Martin did. I was  
12 impressed by it. It was a nice show. But I have  
13 always just stood here and talked to juries, one  
14 person to a group of 12. So let me do that with you.

15 I've been doing this a long time, as I  
16 said, and I had never, ever seen a case like this.  
17 It's the darndest -- if this was a robbery, it's the  
18 darndest robbery I ever saw. And you can use your  
19 common sense and life experience to watch that tape  
20 and come to the same conclusion.

21 You know, it's funny. The only people  
22 who called this a robbery were the police and the  
23 Government. In the beginning, the radio call is  
24 "theft in progress." That's then upgraded by the  
25 police radio. Remember we had that testimony about

1     how the police operator receives the information from  
2     the caller, types something that goes over to the  
3     Dispatch Center, then goes out over police radio?  
4     This somehow gets upgraded to "robbery in progress."

5                 Nobody who was there uses the term  
6     "robbery." Mr. Ventura didn't. Mr. Sanchez and Ms.  
7     Rodriguez, when I asked them the question, they said  
8     -- agreed that it was an argument. Now, who's right?

9                 It's a funny thing, there's an old  
10    saying, "To a hammer, everything's a nail." I suggest  
11    to you that in this case, the Government perceives a  
12    nail, they perceive a robbery, and they proceeded  
13    along that theory. But that's a theory, not a fact.  
14    You're the ones who decide the facts.

15                You know, I was watching the Super Bowl  
16    last night with my wife, and I noticed a couple of  
17    things, that while they showed the game, every now and  
18    then, they'd stop it, and the commentators would  
19    argue, "Was that a touchdown," "Was that pass  
20    interference?" I'm sorry if some of you don't watch  
21    football, but bear with me. And what would happen?  
22    They'd go to the tape.

23                Now, here today and during the case,  
24    the Government has gone to selected portions of the  
25    tape, not the whole tape. You have to ask yourself

1 why they'd do that, because we also saw some ads on TV  
2 last night, and I think I might like the ads better  
3 than the game sometimes, and I noticed that in ads,  
4 when they're advocating a position, you get little  
5 snippets of tape, especially in the political ads, and  
6 we had some on both sides. These didn't show you a  
7 stretch of reality, they showed you what they wanted  
8 you to see.

9                   So I was listening to the Government on  
10 their -- during the presentation of their case and  
11 during Ms. Martin's excellent closing argument, and  
12 I'm thinking, "Why not just show the whole tape?" Why  
13 not show all the tapes, because we -- you're going to  
14 take back with you, as Government Exhibit 1 A and B,  
15 are what the Government compiled as a tape of the  
16 event. And Mr. Cowen's (phonetic) right, Mr.  
17 Patterson's right. It's what the Government, the  
18 police selected, but that didn't show you everything.  
19 It shows you a good deal of it, and the Defense has  
20 submitted video of its own. So I ask you, look at the  
21 tape and decide. Look at all the tape and decide,  
22 because if it was me, I'd play the tape, the whole  
23 tape. And I'd play -- I asked that they play a good  
24 portion of the tape when I was going to cross-examine  
25 Ms. Rodriguez.

1 I want you to ask yourself some  
2 questions. You know that Ms. Rodriguez, for example,  
3 was watching this all unfold on her phone. She has an  
4 app for that. She then goes to the store. She  
5 doesn't seem like she's crazy to you nor to me. Who,  
6 in their right mind, walks into an armed robbery?  
7 Nobody. Who walks into an argument to try and resolve  
8 it? Well, the store owner. Right? Who in their  
9 right mind acts like Mr. Sanchez when he's trying to  
10 resolve things? Nobody. Who in their right mind lets  
11 the mother of their child walk in to an armed robbery?  
12 Nobody.

13 Now, as you watch the tape, ask  
14 yourself if what Mr. Ventura told you is true, that he  
15 doesn't speak English, just enough to make a  
16 transaction. Watch the tape, and you'll see him  
17 gesturing and talking to Mr. Stevens and other people.  
18 Well, we know he's not talking to Mr. Stevens in  
19 Spanish, because he also told you that the customers  
20 don't speak Spanish. He might be talking to Mr.  
21 Sanchez at times in Spanish. We don't know. I sure  
22 wish there was sound, but there's not.

23 So the evidence is for you to judge,  
24 but what I saw on the tape and what I heard from the  
25 witnesses was there was a dispute about money, about

1     what did or didn't come out of the ATM. And it's for  
2     you to decide whether or not Mr. Quinn is trying to  
3     pull a fast one or not. That really doesn't concern  
4     Mr. Stevens, because he doesn't come into the picture  
5     until after that. He would have no knowledge of what  
6     Mr. Quinn is up to with regard to the money.

7                 What we do know is that Mr. Quinn is  
8     being aggressive, and that then Mr. Ventura, for  
9     reasons we don't know, decides to pull out the store  
10    gun, puts it down by his side, and later you saw, when  
11    Mr. Stevens is trying to explain to Ms. Rodriguez what  
12    happens, that he does this (indicating). Even in the  
13    time of silent movies, you know, people made gestures,  
14    and you know what they meant. It was him trying to  
15    tell Ms. Rodriguez, he cocked the gun.

16                So what happens? Well, not their  
17    proudest moment, I'll tell you that. Not something I  
18    would do, not something I would convict him over,  
19    either, but that's for you to decide. They come back  
20    in, and there's a lot of waving of guns. And then the  
21    guns get put away, the store clerk gives Mr. Quinn the  
22    money, they take the gun away from Mr. Ventura, which  
23    is probably a sensible thing to do, after all, he's  
24    the guy that pulled the gun and he cocks it. What  
25    would you do? Say, "Okay. Yeah. Hold on to your

1 gun. Keep it in your pocket. No problem." You would  
2 disarm him. Why? You don't know what he's going to  
3 do. He seems, both on the stand and in the -- on the  
4 tape, to be a rather excitable guy who can overreact  
5 to things. Now, again, he's put in a pressured  
6 situation, no doubt about it. Mr. Quinn is being  
7 aggressive; they're being aggressive. It's scary, but  
8 it's not a robbery.

9 And now I want to focus mostly on Mr.  
10 Stevens. He lives on the block, he's well known.  
11 They all identify him, even if they don't know his  
12 name. Identity is not a question in this case for  
13 anybody, but for Mr. Quinn -- Mr. Stevens, you know,  
14 that's his store. That's his neighborhood store, down  
15 the block from his house.

16 Now, he's got to know that there are  
17 cameras all over the place so that whatever you do  
18 gets recorded. And in fact, everybody knows that,  
19 because the screen is right out there in front of the  
20 cashier's desk. And it's a good thing, because it  
21 tells people, "You're on camera," you know, "We're  
22 going to know what you're doing."

23 So you see him -- and by the way, who  
24 stays at a robbery that long? He stays until the end  
25 and then some. The police cars go flying by, and we

1 know from the testimony of the officers they had  
2 lights and sirens on. The first officer said he cut  
3 his lights and sirens when he got there, but the other  
4 officer who you see going back, you know, along the  
5 street, they've got lights and sirens on. He sort of  
6 turns his head and keeps on talking. Now, if you've  
7 just been part of a robbery, don't you beat feet?  
8 Don't you leave? Don't you run? Don't you go and  
9 hide somewhere? What kind of event is this?

10 It was very interesting that Ms. Martin  
11 would say, "Oh, it's not a dispute." You're right.  
12 It's not a dispute, it's a full-blown argument, a lot  
13 of anger, a lot of people somewhat out of control, but  
14 you know, when Ms. Rodriguez comes in, you see Mr.  
15 Stevens trying to explain it to her. And you watch  
16 the tape, he stayed there. He leans on the ice cream  
17 stand. You've just committed a robbery, is that how  
18 you behave? You lean on the ice cream stand, you  
19 relax? You're somewhat animated and relaxed at the  
20 same time?

21 And what did he say? Well, we know  
22 some of it, but we don't have the sound. From the  
23 witnesses, we know he says, "I'll fix it. I'll get  
24 the gun back."

25 When he goes to Mr. Sanchez, like --

1 Mr. Sanchez goes like this, his hands up, and it's  
2 because, "Hey, take it easy." That's what he said.  
3 He's trying to indicate to Mr. Stevens, take it easy,  
4 tempers are hot, blood's running hot, take it easy.  
5 That's what Mr. Sanchez is trying to say.

6 Mr. Ventura says, "Yeah. I shook his  
7 hand. I wanted to calm him down." If you've just  
8 been robbed, do you shake the robber's hand? Does  
9 that make any sense at all? Of course not, but if  
10 you've had an argument with somebody, what do you  
11 often do? You've had arguments, sometimes loud  
12 arguments, maybe with the spouse, a neighbor, or  
13 friend, a family member. At the end, what do you  
14 often do? Well, guys more often than the women, you  
15 shake hands. Okay. It's resolved.

16 The Government has made a great deal  
17 out of Mr. Stevens saying, "I'll be back," like Arnold  
18 Schwarzenegger in "The Terminator." "I'll be back."  
19 And "This is my block. I'm going to shut you down."  
20 Well, I asked on cross-examination, and I'll suggest  
21 to you now, that we often say things in anger that we  
22 don't mean, only half mean. And Mr. Stevens was very  
23 angry. You can see that from the tape. There's no  
24 disputing that. And he could have behaved better.  
25 They all could have. But some of those things that



1 are said in anger are not true. Threats issued in  
2 anger are not true. They're talk. You can't convict  
3 somebody on talk.

4 Now, the Government said, "Oh, were  
5 they ever back?" like that means something. Well,  
6 hell, they all got arrested. That's why they're here.  
7 We all know they got arrested. Are they going to be  
8 back after that? Of course not.

9 If you had an argument in a store,  
10 whether you're right or wrong, and they called the  
11 cops, and the cops then arrest you, are you going to  
12 go back to that store? No. Why is the Government  
13 trying to say that sort of thing? Well, they want you  
14 to make an inference, an inference that they had some  
15 guilty conscious, when that's not the case at all.  
16 That's not why they don't go back.

17 And you can see the weakness of the  
18 Government case -- of the Government's case when they  
19 try and make that kind of inference to you. You can  
20 see the weakness of the Government's case when they  
21 only show you snippets of the tape. You can see the  
22 Government's case when they tiptoe to the edge of  
23 making inferences they shouldn't and then back away.  
24 Like I said, nobody called this a robbery but the cops  
25 and the Government, because it wasn't.

1                   In the end, it's going to be up to you  
2     to make a decision. I'm not going to talk to you  
3     about the law. I'm not going to define reasonable  
4     doubt for you, because that's the Judge's job. I'm  
5     not going to talk to you about burden of proof. Our  
6     proof is the tape. It was introduced by the  
7     Government and some by the Defense, by Ms. Meehan.  
8     It's there for you, there for you to examine and  
9     decide. The Judge will give you the rules of how you  
10    proceed and how you weigh evidence, but use your  
11    common sense.

12                  You know, you can't make a camel and  
13    call it a horse. A camel is not a horse. They all --  
14    both are on four legs, but one is a radically  
15    different animal than the other. You can't call  
16    something it's not. You just can't, and you  
17    shouldn't. And you shouldn't fall for it.

18                  I'm going to ask you to come back with  
19    the only reasonable verdict in this case for Mr.  
20    Stevens, the man who stayed, the man who tried to  
21    explain things, the man who said, "I'll get your gun  
22    back. I'm trying to fix it."

23                  Now, one thought, if Mr. Stevens is so  
24    clever, so Machiavellian that in an instant, he  
25    switches from a robber to a guy who's trying to work

1 it out as a way of covering it up. No. Maybe you see  
2 that in the movies. Maybe that's some thought of a  
3 Hollywood script writer, but this is real life, and in  
4 real life, people don't act like that. They don't  
5 flip the switch like that. What you see on that tape,  
6 plus what we showed you and when you see the whole  
7 tape, even from the snippets that the Government  
8 showed you, is a man who's not involved in a robbery.

9 Now the Government makes a great deal  
10 about what might have happened outside, and Mr.  
11 Patterson makes an excellent point, where is the tape?  
12 Wouldn't it be nice to have the tape from that camera?  
13 We don't. And if you watch the tape, the whole tape,  
14 you're going to see customers in the store. Some  
15 people were there for the whole -- what kind of  
16 robbery is it where the customers stay? What kind of  
17 robbery is it where people go up to pay for goods?  
18 You can make an inference yourselves, if you want, as  
19 to why those people aren't here. And I'll be honest  
20 with you, sometimes it's because they don't want to  
21 get involved. That's normal. Sometimes it's because  
22 what they have to say won't be in the favor of the  
23 Government, and you can make that conclusion.

24 Mr. Patterson said, "Wouldn't you like  
25 to have that guy in the gray sweatshirt who stays for

1 the whole thing?" He's not a part of any argument.  
2 He's just standing there, right? People come and go.  
3 The Defendants come and go.

4 This is so far from a robbery, and it's  
5 so much like an argument. A robbery, you run in,  
6 "Give me the money," get all the cash you can, and you  
7 split. By the way, did you notice that all the money  
8 that was in the register? Mr. Ventura said, "I don't  
9 really know. There were 10s, there were 5s, there  
10 were 20s, there were 1s." All that was given back is  
11 the \$100 that Mr. Quinn claims he's owed from the ATM.

12 Did people handle this the right way?  
13 No. Was this a crime? Was this a robbery? No.

14 Now, I suggest to you if you find not  
15 guilty on the Hobbs Act robbery, you have to find not  
16 guilty on the gun, because the way it works is the gun  
17 has to be used in a crime of violence. And if there's  
18 no crime of violence, then it's got to be not guilty  
19 on the gun, too.

20 So in the end, deliberate as long as  
21 you need to. Deliberate well and wisely, but I ask on  
22 behalf of my client, Abid Stevens, return a verdict of  
23 not guilty on both counts.

24 Thank you.

25 THE COURT: Thank you, Mr. Wittels.

1 It's almost 12:30, ladies and gentlemen. I think  
2 we'll recess for lunch now rather than having Ms.  
3 Meehan have to, "Fight the clock." We won't do that.

4 But let's try to get back just a little  
5 early, and I'll tell you what we're going to do this  
6 afternoon. We'll hear closing argument from Ms.  
7 Meehan, and then the Government will have a short  
8 rebuttal, and then I will instruct you on the law.  
9 And we'll get all of that done this afternoon.

10 You will begin deliberating this  
11 afternoon, and normally, we recess for the evening at  
12 quarter of 5:00 or so. Today is a different day. We  
13 may recess at a quarter of 5:00, but if you've started  
14 deliberations and want to continue deliberations,  
15 you'll ask me whether you can do that, and I'll talk  
16 to counsel. In all probability, we would say "yes,"  
17 and you can remain for a time. If you choose to have  
18 dinner sent in, we can arrange to have dinner sent in.  
19 You won't be required to stay any particular length of  
20 time. When you choose to leave, you'll send us a note  
21 and tell us that "We're tired, we want to go home,  
22 we'll start again tomorrow," and we would permit that.

23 I'm telling you this now so that you  
24 can let folks at home know that tonight might be a  
25 slightly different evening with respect to your

1 schedule, but you will be the ones to call the shots.  
2 In other words, we won't keep you here if you decide  
3 at the end of the charge, for example, that you want  
4 to go home. You'll go home.

5 But again, if you wish to stay, we can  
6 work that out. And if you stay and miss a ride, or a  
7 train, or a bus and have an unreasonable delay, we  
8 would arrange to send you home. I'd better describe  
9 this carefully. I don't want you thinking that  
10 individual stretch limousines to go home. No, but  
11 we'll arrange to send you home if you miss a ride, or  
12 a bus, or a train and have an unreasonable wait. We  
13 don't want you hanging around the city late at night.

14 I tell you this just so you can --  
15 well, first of all so you will know what the schedule  
16 will be, and number two, so that you can let folks at  
17 home that you might be a little late.

18 And again, I want to end on the note if  
19 you wish to go home at the end of the charge or any  
20 other time, you'll send us a note, and you'll go home.

21 All right. Is there anything else we  
22 have to say before we excuse the jury? Government?

23 (Chorus of no)

24 THE COURT: Okay. Let's try to get  
25 back around quarter after 1:00. It's 12:30 now.

1 THE CLERK: All rise.

2 (Jury out)

3 THE COURT: Be seated everyone. There  
4 are some things that we have to attend to. The  
5 stipulations, Ms. Meehan, you're going to get me a  
6 corrected stipulation?

7 MS. MEEHAN: Yes, Your Honor.

8 THE COURT: And then I will file the  
9 three stipulations. We need to talk briefly about a  
10 procedure for viewing the video. Have you agreed on a  
11 procedure?

12 MR. ECKERT: I believe that we have,  
13 Your Honor, and that would be that the jurors would  
14 have their own laptop, so they wouldn't have to come  
15 back and forth. We've provided them with the CD. And  
16 I believe one of the folks from the IT Department in  
17 the courthouse would go back there at the beginning of  
18 the deliberations and just show them how it worked.  
19 And then, of course, the part -- they'd be free to --  
20 the jury would be free to view it as much or as little  
21 as they need.

22 THE COURT: Is that agreeable to  
23 everyone? Mr. Patterson?

24 MR. PATTERSON: It is, yes, Judge.

25 THE COURT: Mr. Wittels?

1 MS. MEEHAN: Yes, Your Honor.

2 MR. WITTELS: Yes.

3 THE COURT: Ms. Meehan? Fine. I'll  
4 take care of that.

5 Exhibits. Has the Government compiled  
6 a book of the exhibits that were received in evidence?

7 MR. ECKERT: We have, Your Honor.

8 THE COURT: And there's an exhibit  
9 list?

10 MR. ECKERT: We will get that up -- we  
11 will get that up.

12 THE COURT: Fine. And we'll give that  
13 to the jury. And, Ms. Meehan, you're the only other -  
14 - well, the only other party who's offering any  
15 exhibits.

16 MS. MEEHAN: Yes, Your Honor.

17 THE COURT: And what do you have?

18 MS. MEEHAN: I think what -- I have  
19 what we reviewed the other day, Your Honor, which was  
20 D 1-A, which consisted of D 1 through 6, which was the  
21 entire video. Your Honor, if you'd bear with me for a  
22 moment. I'm sorry. D9, 10, and 11.

23 THE COURT: Do you have an exhibit list  
24 for those exhibits?

25 MS. MEEHAN: 8, 9, and 10. I'm sorry.



1 I thought that the Court had that, but I can --

2 THE COURT: No.

3 MS. MEEHAN: I can get that together.

4 THE COURT: I have what you gave me for  
5 trial purposes, but that's not an exhibit list that  
6 I'm going to give to the jury.

7 MS. MEEHAN: Very well.

8 THE COURT: I need an exhibit list that  
9 will go out with the jury. For example, they'll get a  
10 disk -- they won't know what it is.

11 MS. MEEHAN: Right.

12 THE COURT: You need an exhibit list  
13 covering the, I think, the three photos that were  
14 received in evidence and the two disks. I need those  
15 five exhibits and an exhibit list.

16 MS. MEEHAN: Very well. Thank you.

17 THE COURT: All right. Then we're in  
18 recess until quarter after 1:00. You may go about  
19 your business.

20 THE CLERK: All rise.

21 (At 12:33 p.m., proceedings recessed  
22 for lunch.)

23

24

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25

1                   A F T E R N O O N   S E S S I O N

2                               (1:24 p.m.)

3                   THE CLERK:   All rise.

4                   THE COURT:   Be seated, everyone.

5                   All right.   Ms. Meehan, are you ready  
6 to proceed with your closing?

7                   MS. MEEHAN:   Yes, I am, Your Honor.

8                   THE COURT:   We will hear your closing.

9                   MS. MEEHAN:   Good afternoon.   Welcome  
10 back.   I represent Mr. Quinn.

11                   The Government is trying to prove  
12 something here that just didn't happen.   They're  
13 offering you a buffet of versions and theories,  
14 plural, you heard that in the Government's closing.

15                   But we all know what a robbery looks  
16 like.   Somebody or more than one person goes in,  
17 they're wearing a mask, maybe a hoodie, glasses,  
18 hiding their identity, they're in and out as fast as  
19 possible, they take as much money as possible -- take  
20 -- they take as much money, anything and everything.

21                   You know that's not what happened on  
22 March 22nd.   Mr. Quinn is at this store every day,  
23 sometimes multiple times a day.   You know that from  
24 Ms. Rodriguez, and sort of, kind of, you know that  
25 from Mr. Ventura.   And but for what happened on March

1 22nd, he would've been back the following day, and the  
2 day after that, and the day after that, using the ATM,  
3 buying cigarettes, doing what he's done every single  
4 day.

5 And you'll recall Ms. Rodriguez said,  
6 "Always seemed like a nice guy." She told you that.  
7 "He always seemed like a nice guy." So this was out of  
8 character for Mr. Quinn this day.

9 So on March 22nd, after using the ATM  
10 in the store several times that day, and you'll have  
11 G20 -- G49, excuse me -- you can look at that, and you  
12 heard from the bank witness, that Mr. Quinn had  
13 actually taken out \$220, not 20, 200: 100, 100, and  
14 then 20; and, of course, that doesn't include the bank  
15 fees on both sides, Mr. Quinn's bank and the store  
16 that makes some money from that.

17 So he took out \$220, and he tries to  
18 buy cigarettes, and Mr. Ventura tells him -- Mr.  
19 Ventura says, "This isn't real money. This is fake."  
20 He won't take Mr. Quinn's money in order to sell the  
21 cigarettes to him. And Mr. Quinn says, "But this  
22 money came from your machine," and he spreads it out,  
23 and you'll see this on -- this is actually on camera 8  
24 at 4:51:51. So he did throw it down, and then he  
25 spreads it out for him, "Look, this is from your

1 machine."

2 I don't know if that obviously looks  
3 like counterfeit, but how would Mr. Quinn know that?  
4 So, he's -- they're arguing back and forth, and back  
5 and forth, and Mr. Quinn is trying is trying to get  
6 reimbursed. He's trying to get reimbursed for the  
7 money that came from his account from that store ATM.  
8 And every store witness told you that this was about  
9 the money from the ATM machine, every store witness:  
10 Mr. Ventura, Ms. Rodriguez, Mr. Sanchez. "I want my  
11 money, I want my money." So Mr. Quinn wants his  
12 money, he wants to be reimbursed.

13 And don't let the Government argue that  
14 this was a scam. First, they said, "Oh, well, this is  
15 a scam." There's absolutely no evidence of that. You  
16 just saw him trying to show Mr. Ventura, "This is from  
17 your machine." And then Government counsel said,  
18 "Well, if it's not a scam, then picture this." So,  
19 you can't have it both ways.

20 This was not a scam, and why would Mr.  
21 -- think about this, he's there every day, this is his  
22 store, this is his habitat. Why would he try to scam  
23 a store that he's in every single day? He seemed --  
24 always seemed like a nice guy. This is not the guy  
25 who's trying to scam the store.

1           If you're going to do that, you go to a  
2 store you've never been to before, and you never  
3 intend to go back to, and you know that.

4           So, Mr. Quinn is really upset, and he  
5 gets more upset, and Mr. Ventura puts Ms. Rodriguez on  
6 the store -- on his phone. I assume it's his personal  
7 phone. So, and, again, what robbery -- in what  
8 robbery does that happen? So Mr. Quinn gets on the  
9 phone, and Ms. Rodriguez is trying to explain to him,  
10 "I can't take care of this now, I have to call the ATM  
11 guy, and then do this and that." And he's getting  
12 more upset, because he can see that he's not getting  
13 his hundred dollars back that day.

14           And make no mistake about it, if in  
15 fact the Government thought for one minute that this  
16 was a scam, they would've been able to investigate the  
17 ATM machine. And they had ample time to do that, and  
18 there's no evidence of that.

19           So, Ms. Rodriguez is on her way, she's  
20 driving there, and Mr. Quinn is still yelling over and  
21 over again, "Give me my money. Give me my money." He  
22 goes behind the counter, and this is of some  
23 significance, because Mr. Ventura tried to convince  
24 you that Mr. Quinn not only was saying, "I want my  
25 money, I want my money," but he's also saying, "Give

1 me the Glock. I want the Glock."

2 But I want you to take a look at this,  
3 and you'll have this, this is D-1A, and it's got all  
4 the cameras. This is -- you'll see camera 7 in the  
5 corner here, and the time up there (indicating). Look  
6 at Mr. Quinn. He is aggressive and obnoxious, but he  
7 is in Mr. Ventura's face. There is no way he is  
8 looking over here (indicating). He never looks over  
9 there (indicating). And you've seen the exterior of  
10 this cubby. You've seen it. There's all kinds of  
11 clutter. You can't possibly see what's in those  
12 cubbies as a customer. And we know he'd never been  
13 behind the counter before March 22nd.

14 So, and then he backs up. So there is  
15 just absolutely no way -- how would you possibly know  
16 where the gun is, and that it's a Glock? So that is  
17 just not very credible.

18 And you'll remember Mr. Sanchez was on  
19 the witness stand, and he was asked, I believe, on  
20 direct, "Did you hear everything?" and he said, "Yes,  
21 I could hear everything." And he told you, Mr. Quinn,  
22 over, and over, and over again, "I want my money. I  
23 want my money." You never heard from Mr. Sanchez that  
24 Mr. Quinn said, "Give me the Glock." And that's  
25 really significant. And you should be questioning

1 that about Mr. Ventura's testimony.

2 So, and you'll recall, just as an  
3 aside, you saw Mr. Ventura as a witness, and I  
4 understand, and I'm not disrespecting him. I'm sure  
5 he doesn't -- maybe he doesn't speak good English, but  
6 he had an interpreter on both days of his testimony.  
7 And I asked him, "Do the customers call you Jay, or  
8 Papi?" And that was a 10-minute answer. So think  
9 about his demeanor on the witness stand when he was  
10 testifying. That exchange, "I want the Glock," just  
11 simply never happened. That is fiction.

12 So, Mr. Quinn goes behind the counter,  
13 and Mr. Stevens comes in the store, and Mr. Stevens,  
14 as you know, is another frequent customer, and he is  
15 trying to figure out what's going on, why is his  
16 friend, Mr. Quinn, yelling, what's going on. He  
17 wasn't there for the ATM discussion. He wasn't there  
18 when Mr. Quinn was on the phone, on speaker phone,  
19 with Ms. Rodriguez. He doesn't know what's going on.

20 But there are other customers in the  
21 store. Everybody's milling about, and you'll recall  
22 not a single customer, not a single customer called  
23 the police. No one called 911. Because what they  
24 were watching was a very upset and angry Mr. Quinn in  
25 an argument, in -- engaged in an argument with Mr.

1 Ventura, trying to get his money back that was from  
2 his bank account from the store's ATM.

3 And then things escalate, and Mr.  
4 Ventura pulls the gun out from the cubby. You saw Mr.  
5 Quinn step back, remember you saw that, and then  
6 you'll see on the same video, that Mr. Quinn is on the  
7 side trying to exchange -- you'll see him on the side  
8 of the counter, if you watch the whole video, he's  
9 still trying to pass the money to Mr. Ventura, the  
10 hundred dollars in exchange for the money from the  
11 register. And he's still very frustrated.

12 And then he leaves when -- after Mr.  
13 Ventura pulls out the gun, he says, "I'll be back."  
14 So what? He's still angry, as you know. You saw him,  
15 and he comes back into the store -- well, he leaves  
16 the store at 16:54:54. Mr. Stevens is still in the  
17 store, still trying to figure out what's going on.

18 And then it's at some point after Mr.  
19 Quinn leaves, he's no longer in the store, that Mr.  
20 Ventura cocks the gun. And we're going to look at  
21 camera 7, at 16:54:55, when you see this, this motion  
22 (demonstrating), and you heard co-counsel, Mr.  
23 Patterson, ask the police about how you would ready  
24 the gun to be fired. Mr. Stevens reacts to that, and  
25 he leaves the store at 16:55:14.



1                   And now as Mr. Stevens is leaving --  
2                   and this timing is really important, and that's why  
3                   you saw a chart from Mr. Patterson, and that's why the  
4                   sequence on the video, which is really the best  
5                   witness, the video. Not stills, because that doesn't  
6                   really show the whole story, but what was going on  
7                   real-time, second by second, minute by minute.

8                   You'll see here at 16:55, Mr. Stevens  
9                   leaves -- there he is, 13, this is on camera 13,  
10                  16:55:13, he's walking out of the store, and then just  
11                  one second later, one second later, Mr. Quinn, there  
12                  he is (indicating), you can see the corner of his  
13                  sweatshirt there on the left side of the monitor, on  
14                  the shoulder of Mr. Sanchez. Mr. Sanchez is in the  
15                  doorway there. Here comes Mr. Quinn, after Mr.  
16                  Stevens has just stormed out.

17                  Mr. Quinn comes in, and he's back in  
18                  the store, and here he is (indicating) still yelling  
19                  at Mr. Ventura, still yelling at him, and he's still  
20                  mad. Now, watch this part. He's still yelling.  
21                  We're at 16:55:29, and, again, you can see the  
22                  Plexiglas how much stuff there is, remember I had  
23                  mentioned, you couldn't possibly know where a gun is  
24                  on the other side of that.

25                  Now, here we are, and it is, I think,

1 31 seconds later that Mr. Smith will come into the  
2 door. Here he is (indicating), here comes Mr. Smith,  
3 16:55:48, and he, sort of, goes right by Mr. Quinn  
4 who, sort of, gives him a passing glance. And right  
5 -- look at this, and this is actually also G --  
6 Government 1-C23.

7 Look at Mr. Sanchez's face in the left  
8 corner of the monitor, look at Mr. Quinn. Look at  
9 him. He's surprised. He's just as surprised as Mr.  
10 Sanchez. This is right at the moment where Mr. Smith  
11 has pulled out a gun, or whatever it is. You're to  
12 determine that. But he has pulled something out, and  
13 look at Mr. Quinn's face. He is just as surprised as  
14 the store employee.

15 This was not a plan. There was no  
16 advance knowledge here. There's no evidence. In  
17 fact, there's an opposite of advanced knowledge here.

18 So, then right after -- now, look at  
19 Mr. Stevens' face. He's looking over, too. And I'll  
20 leave it for you, ladies and gentlemen, to determine  
21 what you see on Mr. Stevens' face as well.

22 So Mr. Stevens comes in, and that's at  
23 16:55:57, and this is all on camera 13, and this is  
24 all part of D-1A, and the Government's G-1 as well.  
25 And Mr. Quinn looks down, and you'll see when Mr.

1 Stevens comes in -- and if we could play that -- he  
2 practically pushes Mr. Quinn into the Plexiglas, and  
3 then Mr. Quinn, sort of, swats at his hand, or tries  
4 to push his hand down.

5 Can we play that again (indiscernible -  
6 1:37:01)? Watch this. And he's trying to, "Hey,  
7 don't -- what are you doing? Come on." Remember, Mr.  
8 Stevens doesn't know about the ATM machine, and  
9 there's no evidence that Mr. Smith knew about what  
10 this yelling was all about from -- by Mr. Quinn.

11 So, Mr. Stevens -- so you see Mr. Quinn  
12 go into the Plexiglas and then at some point -- so  
13 this right here (indicating), this is evidence of  
14 spontaneity. That's what that was. That was  
15 spontaneous. There's no advance plan, there's no  
16 advance knowledge.

17 And the Government is trying to argue  
18 that these three must've concocted this somehow  
19 outside. But this is why the timing is so important,  
20 because you saw Mr. Stevens and Mr. Quinn, like, cross  
21 each other in a second or two. I think the Government  
22 said two. It's over a second or two. And then Mr.  
23 Smith isn't in the store at any moment, but, oh,  
24 something must've happened outside.

25 Well, that's just absurd, because you

1 heard from Detective O'Brien (phonetic), and his exact  
2 words were -- but it's your recollection that  
3 controls, "Everything happened on the interior.  
4 Everything happened on the interior. I made a  
5 judgment call."

6 So he made a judgment call to get all  
7 of the interior cameras, and we know they were  
8 exterior cameras, and then he and his fellow police  
9 had 20 days, 20 days, to review this evidence, and  
10 say, "Oh, there must've been something going on  
11 outside, let's get that evidence." There is no  
12 evidence. That's why it's not before you, that's not  
13 -- that's why you haven't seen any of that. This was  
14 entirely spontaneous.

15 So then Mr. Smith, and it's Mr. Smith  
16 alone who advances on Mr. Ventura, for whatever  
17 reason, and it's for you to determine whether it was  
18 his wife's safety and so forth. But it's Mr. Smith  
19 who goes over to Mr. Ventura, and he takes the store  
20 gun from Mr. Ventura, and Mr. Quinn wants no parts of  
21 this. And this is important.

22 I want you to take a look at -- this is  
23 camera 6, at 16:56:31, take a look at what Mr. Quinn  
24 does. He physically lifts Mr. Smith up, physically.  
25 Lifts him up, lifts him up, and puts him, sort of,

1 away from Mr. Ventura. And then he's, sort of,  
2 pushing him, "Get out of here." And he's pushing,  
3 he's telling Mr. Stevens and Mr. Smith, "Just go. I'm  
4 just -- this is my issue. Just go."

5 This is the opposite of aiding and  
6 abetting. This is the opposite of accomplice  
7 liability, and the opposite of a conspiracy.

8 So Mr. Quinn then goes to the register,  
9 and he's acting like an idiot. He puts his sleeve  
10 over his hand, and he tries to get into the register,  
11 and he's unable to. And then you hear Mr. Ventura  
12 when he testified -- and Government counsel asked him,  
13 "Why did you open the register?" And I believe he  
14 twice said, "Because he was asking me to do it."  
15 Asking. That was his word. "He was asking me to do  
16 that." "He was asking for his money." I believe that  
17 was a direct quote. "He was asking for his money."

18 And then I think Government counsel  
19 asked him -- and then he said -- I'm sorry -- "the  
20 problem had to do with the hundred dollars." The  
21 problem. Problems are not robberies. Robbery is not  
22 a problem, and a problem is not a robbery. "I gave  
23 him his money." "The problem had to do with the ATM,  
24 with the hundred dollars."

25 So then Mr. Ventura gives him exactly

1     \$100, and you'll see, this is on camera 4, and I --  
2     you've seen this before where Mr. Ventura -- and you  
3     know there's more money in the register. There's a  
4     dollar bill at the top of the register that remains  
5     there the whole time. Mr. Ventura counts out exactly  
6     five \$20 bills. And the point is, that Mr. Quinn did  
7     not rob, he didn't take. He was being reimbursed for  
8     the money that came from the store's ATM machine.

9                     Was he aggressive? Yes. Was he  
10    obnoxious? Yes. Was he -- did he maybe do a simple  
11    assault when he was overly aggressive, physical, with  
12    Mr. Ventura? Maybe. But he's charged with armed  
13    robbery. This was no robbery.

14                    And then as he's leaving, he leaves --  
15    right after this, he leaves. Doesn't take another  
16    thing. He has his hundred dollars, the hundred  
17    dollars that he was asking for, as Mr. Ventura told  
18    you, and as he's leaving, he passes Ms. Rodriguez on  
19    the way out of the door, and I think Ms. Rodriguez  
20    said something to him, and he was very crude, and  
21    said, you'll recall, "Fuck you all, I got my money."

22                    And then he walked, walked, up Ross  
23    Street. He didn't go to Sharpneck, he walked up Ross  
24    Street, because this was not a robbery.

25                    And then remember Mr. Sanchez saying --

1 and this is, again, very odd -- something odd to say  
2 if you're in the middle of a robbery. Mr. Sanchez  
3 testified that he was saying, "Calm down. There's no  
4 need for this. There's no need for this. There's no  
5 need for all this drama over the money from the ATM  
6 machine." And he also said, "I didn't want the  
7 argument." He called it an argument. The Government  
8 witness called it an argument. I believe Ms.  
9 Rodriguez called it an argument as well. "I didn't  
10 want the argument to get out of hand."

11 So as to Count I, robbery, the  
12 Government -- the Court, pardon me, the Court will  
13 instruct you on the fact that there must be unlawful  
14 taking. Mr. Quinn did not unlawfully take anything.  
15 We know he could've taken everything in the store, we  
16 know that. He was reimbursed the money that he was  
17 owed.

18 And they want you to find that Mr.  
19 Quinn aided and abetted Mr. Smith in the taking of the  
20 store gun. Again, there's no evidence that. How  
21 would he have known that Mr. Smith was going to take  
22 Mr. Ventura's gun? There's simply no evidence of  
23 that, and you saw the opposite where he physically  
24 picks up Mr. Ventura -- Mr. Smith, rather, and moves  
25 him away from Mr. Ventura. We just saw that.

1           So how do you reconcile the facts with  
2 the law? You are the factfinders, you can determined  
3 what -- determine what happened here based on what you  
4 see on the video, what you determine is credible on  
5 the witness stand, and what you believe really  
6 happened.

7           And the Government spent hours and  
8 hours on Thursday with various witnesses that had very  
9 little to do with what happened on the interior of the  
10 store. And they'll argue, or they may argue in  
11 rebuttal, that because Mr. Quinn -- there was a lot of  
12 telephone testimony, remember, from the T-Mobile  
13 witness, Mr. Sierra, that Mr. Quinn had called Mr.  
14 Smith, I think, six or seven times at sometime after  
15 5:30, I think it was 5:46.

16           That is no evidence of a plan, and you  
17 can imagine what the conversation was between the two,  
18 Mr. Quinn saying, "What were you doing?" Mr. Smith  
19 saying, "I was trying to help my wife," and back and  
20 forth. But we know that Mr. Quinn and Mr. Smith did  
21 not speak on March 21st, and they did not speak on  
22 March 22nd until well after Mr. Quinn and all of this  
23 incident was over.

24           So if there's no taking, which is the  
25 essence of robbery, there's no robbery, then Mr. Quinn



1 is guilty.

2 Do not be persuaded by the false  
3 argument that the Government made on their closing  
4 that Mr. Quinn was desperate. You'll see -- you can  
5 have -- you can take a look at the bank records, that  
6 was G49, you will see that Mr. Quinn's bank account  
7 fluctuated. There were many times where he was in a  
8 negative balance. March 22nd was nothing unusual. It  
9 would fluctuate, he would get a paycheck, he was  
10 working, and his bank account would be recovered.

11 And again, we know that he was a  
12 regular customer. Ms. Rodriguez said, "He always  
13 seemed like a nice guy." This was not -- he was not  
14 there to take anything from the store that was not  
15 his. So don't let that be -- that's just not a  
16 credible argument from the Government.

17 So if he's not guilty of robbery, you  
18 should find him not guilty of Count II, because  
19 there's no crime of violence if there's no robbery.

20 In Count II, Mr. Quinn is charged with  
21 aiding and abetting Mr. Smith and Mr. Stevens using or  
22 carrying a firearm in relation to a crime of violence,  
23 and we already talked about whether this was a crime  
24 of violence or not. And the key question is did Mr.  
25 Quinn have advanced knowledge that Mr. Smith or Mr.

1 Stevens would come into the store with a gun.

2 Advanced knowledge means before they  
3 entered the store. They must prove that beyond a  
4 reasonable doubt. So what would you want to see to  
5 show evidence of advanced knowledge? Well, if they  
6 spoke inside the store before guns were used, if there  
7 was some evidence that there was a conversation, or  
8 some commands, or orders, that would be some evidence  
9 of advanced knowledge maybe. There's no evidence of  
10 that.

11 In fact, Mr. Quinn, you just saw,  
12 appears very surprised when Mr. Smith goes across the  
13 store and pulls out a gun. And then he pushes Mr.  
14 Stevens' hand away after Mr. Stevens come in, and  
15 literally pushes him.

16 If they spoke outside the store,  
17 there's no evidence of that. And you know all about  
18 that, you've heard all three of us argue that you  
19 would've seen something from the outdoor cameras if  
20 there had been evidence of advanced knowledge.

21 The Government can't simply claim that  
22 something must've gone outside -- gone on outside,  
23 therefore there was advanced knowledge. They need to  
24 show you evidence. They need to convince you beyond a  
25 reasonable doubt. There has to be evidence.

1                   So, and you know these three Defendants  
2 were at cross purposes. No one knew what anything --  
3 what happened with Mr. Quinn, with the ATM, Mr. Quinn  
4 may not have realized that Mr. Smith's wife was in the  
5 store, there were all sorts of things going on, and  
6 you can see this on the video, and I urge you to watch  
7 the entire video, just, in one sitting, and not in  
8 clips.

9                   So, Mr. Stevens comes into the store  
10 for his own reasons, perhaps. Perhaps because Mr.  
11 Ventura cocked the gun, and not because of Mr. Quinn's  
12 argument. You saw Mr. Stevens on the video -- and we  
13 can watch that again, explaining to Ms. Rodriguez --  
14 now, here we are on camera 13 (indicating), this is at  
15 16:59, here comes Ms. Rodriguez in the door, and he's  
16 trying to explain. Look at him, look at this motion  
17 (indicating). Why would he do that? Why would he do  
18 that, if he wasn't trying to explain to her that  
19 something had happened? So he was mimicking exactly  
20 what you saw Mr. Ventura doing behind the counter.

21                   And then on camera 12, at 17:04:33, he  
22 makes that same -- run it back again. Sorry. He  
23 makes that same motion again, there it is, same  
24 motion. Trying to explain to her why things  
25 escalated, why did they get to where they were. And

1 again, you heard Mr. Sanchez say that Mr. Stevens was  
2 saying, "What happened? How did it get here? Why --  
3 why is -- why did this happen this way?"

4 Mr. Quinn is then turning to leave the  
5 store -- another thing about advance knowledge, Mr.  
6 Quinn is turning to leave the store just before Mr.  
7 Smith pulls out a gun, and I -- this is really  
8 important, because this really cuts against any, any  
9 planning or advance knowledge. This is 16:55:51,  
10 again, on camera 13, look at this (indicating). He's  
11 backing up, he's about to leave, the doors open.

12 Can we show that again?

13 Backing up, backing up, and then all of  
14 a sudden, this (indicating). Surprise. And then you  
15 know, you saw Mr. Quinn try to physically move Mr.  
16 Smith out of the way.

17 There is evidence that Mr. Quinn did  
18 not want firearms involved in this argument. He did  
19 not have advance knowledge that guns would be involved  
20 in this.

21 And finally, the Judge -- part of the  
22 instruction on accomplice liability on Count II for  
23 Mr. Quinn would be if the Defendant -- and this is  
24 only a portion of the instruction, and of course, the  
25 Court's instructions control -- if the Defendant

1 continues to participate in a crime, and in this case  
2 the crime would be robbery. And I've already gone  
3 through all the reasons this is not a robbery -- after  
4 a gun is displayed or used.

5 This conduct isn't right. Mr. Quinn  
6 was out of line, he was obnoxious, he was aggressive.  
7 But he's charged with armed robbery, and you know that  
8 this is not an armed robbery, and I ask you to find  
9 him not guilty on Counts I and II. Thank you.

10 Thank you, Your Honor.

11 THE COURT: Thank you, Ms. Meehan.

12 Yes. The Government is now given an  
13 opportunity to rebut the arguments made by defense  
14 counsel.

15 Mr. Eckert?

16 MR. ECKERT: Thank you, Your Honor.

17 So the theory of this case is that if  
18 tonight, you go into Acme, or you go into ShopRite,  
19 you go into CVS, you go into Walgreens, any business  
20 in the world with an ATM, and that ATM gives you \$80  
21 instead of \$100, or it gives you a \$20 bill that is  
22 fake, you have the right to go to the cash register,  
23 try to get her money, when the person at the cash  
24 register says, not, "Go away. I'll see you in six  
25 weeks," says, "Let me call my boss. Let me call my

1 manager so that they can come down here, and try to  
2 work out the situation."

3 Because what is the clerk supposed to  
4 do? "Oh, you were just at my ATM, and you told me you  
5 gave me fake money, so here's \$100 hundred bucks."  
6 They would be fired in 15 seconds. He called his boss  
7 and said, "Can you come down here, because there's a  
8 situation." And his boss said, "Okay, great." And  
9 tells him, "I'm going to come down there." Not, "See  
10 you later. Goodbye. No way." "Sure, okay. I'll  
11 come down there, and I'll try to work it out." And he  
12 says, "No, absolutely not."

13 What he does is he goes and gets two  
14 other people, whether -- however they got in the  
15 store, it really doesn't matter. The fact of the  
16 matter is that two other people are then in the store,  
17 both of whom have guns, both of whom put the guns in  
18 the face of Joel, and that's why he gets the money.

19 How do you know this is aiding and  
20 abetting? The most important reason for that is  
21 because Mr. Quinn tries to get his money first, and he  
22 was not successful. He tries to get the money, and  
23 Joel says, "No. I need to call my boss. I need to  
24 look into this," right? And then he enlists the help  
25 of two other people, aiding and abetting.

1                   Aiding is a legal word for help.  
2       That's all it means. It means that he's getting two  
3       other people to help him. And that's why he's  
4       successful, because Mr. Stevens and Mr. Smith come  
5       back with the guns, and that's how they get the  
6       register. That's how they get the store gun, and  
7       that's how they get the register opened.

8                   Oh, another thing. The \$100. You've  
9       heard a lot of arguments about, "Well, this was about  
10      \$100. This was at \$100." The only reason he doesn't  
11      empty that register is because he can't figure out how  
12      to get it open. Donnie Smith, right next to him, two  
13      feet away, "Take everything. Take it all. Take  
14      everything." And Quinn's trying to get the register  
15      opened, but he doesn't know how, because he doesn't  
16      work there. He doesn't know. There's 30 buttons on  
17      the register, and he's not going to know which one it  
18      is that opens it up. That's the only reason he  
19      doesn't clean out the register. And that's why it's  
20      about \$100, because he then has to back out, and Joel  
21      has to go back in again, being forced to give the  
22      money.

23                  There was a lot of discussion about  
24      justification, and when it's -- the concept of  
25      justification has not really been discussed yet. You

1 heard the phrase from counsel for Mr. Smith, that he  
2 ushered his wife out of the store. And the Government  
3 would ask that you remember that. Because when he  
4 ushered his wife out of the store, he ushered any  
5 justification defense right out of this case. The  
6 second the wife leaves the store, there's no more  
7 justification.

8 What justification means is that you're  
9 taking actions to alleviate the threat, to eliminate  
10 the threat. If you believe there's a threat to his  
11 wife, so be it. But once she leaves the store, there  
12 goes any justification defense.

13 The question is not is he justified in  
14 going in the store. The question is not is he even  
15 maybe justified in taking his gun out. That's  
16 ludicrous, for a number of reasons, but assume for the  
17 sake of argument that that would be okay. It's 30  
18 seconds later that they take the gun. It's even more  
19 time after that they take the money out of the  
20 register.

21 Remember that Donnie Smith puts his gun  
22 in the face of Joel Ventura multiple times. Not once,  
23 not twice, distinct, separate times. After they get  
24 the store gun, after Donnie Smith gets the store gun  
25 and puts it in his pocket, even after that, he again



1 puts his gun in Joel's face to facilitate the robbery,  
2 to aid and assist in helping the robbery happen.  
3 There is no way, absolutely no way, that that action  
4 is at all in any way, shape, or form related to his  
5 wife. His wife's been out of the store for plenty of  
6 time at that point.

7 If you actually look at the elements of  
8 justification, there are four elements of  
9 justification, and he fails each one. The immediate,  
10 unlawful threat of death, or seriously serious bodily  
11 injury. That's gone when she leaves the store.

12 Second, had a well-rounded reasonable  
13 belief that the threat would be carried out if he did  
14 not commit the offenses. Even if you believe he has  
15 to go in the store, the offense of robbery has nothing  
16 to do with that.

17 Third, that Mr. Smith's criminal action  
18 was directly caused by the need to avoid the  
19 threatened harm, and that Donnie Smith had no  
20 reasonable lawful opportunity to avoid the threatened  
21 harm without committing the offenses. He could've  
22 walked out of the store. If it's all about his wife,  
23 the second he comes in the store and pulls the  
24 firearm, he walks out with his wife. Everything that  
25 happens after that has nothing to do with

1 justification, and we'd ask you to reject that  
2 defense.

3 The 911 call. So someone did call 911  
4 -- 911 in this case. Isalisa Rodriguez, she called  
5 911, because she talked to Joel, and Joel told her a  
6 little bit of what's going on. She talks to Mr.  
7 Quinn, and then she is able to briefly watch a little  
8 bit of that video on her phone. She called 911. So,  
9 the idea that all these people in the store didn't  
10 call 911 doesn't have to do with anything.

11 Speaking of things that don't have to  
12 do with anything. You've heard all kinds of argument  
13 about racking the charging handle, about whether --  
14 first of all, it's not in the video. But even if you  
15 believe that happened, when you look at the elements  
16 of the offenses, and the elements of the offenses are  
17 the most important thing, that's what the Judge will  
18 tell you. To find a person guilty, you have to find  
19 the Government's proven each and every element beyond  
20 a reasonable doubt.

21 Racking the charging handle, or  
22 chambering a round, has nothing to do with any of the  
23 elements of the offenses. Why? First, because that  
24 happened when one person was in the store, when Mr.  
25 Stevens was in the store. There is no evidence before

1 you whatsoever that Mr. Quinn or Mr. Smith would've  
2 even known about that.

3 Second, it doesn't negate anything. It  
4 doesn't negate whether this was a taking. It wasn't -  
5 - whether that -- whether there was a round in the  
6 chamber or not has nothing to do with anything, but  
7 it's a great way to distract you, and to make you --  
8 to somehow try to dirty Joel up, that somehow he's the  
9 bad guy. That when you watch that video, you should  
10 be mad at his conduct.

11 But remember that Joel never raised  
12 that gun, not one time. His gun never left his side.  
13 At one point, he puts it in his pocket. When Donnie  
14 Smith goes in the store, his hands are literally like  
15 this (indicating), up in the air, because the gun's in  
16 his pocket.

17 The quote was that Joel is a rather  
18 excitable guy, who overreacts to things. That's what  
19 you're told.

20 Pull up 1C 43, please.

21 (Asides)

22 MR. ECKERT: All right, we'll get back  
23 to that in a second -- we'll get back to -- for that.  
24 I apologize for that about the photo. But some of the  
25 things that were discussed, "He's asking me for

1 money." That Mr. Quinn's counsel argues to you that  
2 somehow because he said the term, "Well, he's asking  
3 me for money." The reason he's asking me for money is  
4 because he's failed two times before. He went back  
5 there himself, wasn't successful. He went back there  
6 the second time after -- by himself, without Mr.  
7 Ventura, the clerk, after the other two people are in  
8 the store with guns, and he was unsuccessful.

9 So yes, the third time when he's back  
10 there, he's demanding his \$100. Asking, demanding, it  
11 makes no difference. The fact of the matter is that  
12 the only reason that was successful is because guns  
13 were introduced by Smith and Stevens in this case.

14 You can use the term "asking,"  
15 "demanding," "taking," whatever you want in common  
16 English, but the only reason that that happened was  
17 because the guns were brought to that store by Stevens  
18 and Smith.

19 The advance knowledge. A lot of  
20 discussion about advance knowledge. The quote that  
21 the Government would submit to you, you're going to  
22 hear from the Court is, "Advanced knowledge means  
23 knowledge beforehand, such that the Defendant had a  
24 realistic opportunity to leave the scene of the  
25 robbery after learning that a firearm would be used or

1 carried."

2 He had a realistic opportunity to leave  
3 the scene. How many times did Mr. Quinn have a chance  
4 to walk away when he sees the guns, when Donnie first  
5 pulled -- when Smith first pulls out his gun, when  
6 Stevens pulls out a gun? There's ample time for him  
7 to say, "Oh, I didn't know they were coming out. I'm  
8 going to leave the scene." That doesn't happen. He  
9 absolutely had advanced knowledge before the robbery  
10 actually happens.

11 One final thing for each of the  
12 Defendants. For Mr. Stevens, they would have you  
13 believe that he's the peacemaker here, that he's  
14 coming in there, and he's just going to work  
15 everything out. He was holding the peacemaker in his  
16 right hand, and that was the firearm that he put in  
17 Joel's face. That's the peacemaker that Mr. Stevens  
18 was. How do you know that? Because what happens  
19 afterwards? "I'll shut you down. This is my  
20 neighborhood." He's telling Mr. Rodriguez, "Don't  
21 talk to the police, don't make this a police matter,  
22 because I own the neighborhood."

23 Second, Donnie Smith. This has nothing  
24 to do with his wife. How do you know that? Because  
25 you were told -- the argument was made to you, "Who

1 brings their wife into an armed robbery?" The  
2 Government has no idea. But you know who leaves their  
3 wife at an armed robbery? You know who -- even though  
4 this was all about his wife, the second Officer  
5 Ferrero (phonetic) walks in front of the car, he pulls  
6 away.

7 This has nothing to do with his wife.  
8 Absolutely nothing whatsoever. The wife is a  
9 smokescreen to distract you from the real issues in  
10 the case.

11 Finally, Mr. Quinn. It all starts with  
12 Mr. Quinn and the cash register. And the only reason  
13 the only way he's able to get anything out of that  
14 cash register is because two people come back and help  
15 him out with guns. That's it. It's really that  
16 simple.

17 Thank you for your time.

18 THE COURT: Thank you, Mr. Eckert.

19 MR. ECKERT: Thank you.

20 THE COURT: Ladies and gentlemen, now  
21 that you've heard all of the arguments, you've heard  
22 and seen all of the evidence, it's my opportunity to  
23 instruct you on the law.

24 You have two duties as a jury. Your  
25 first duty is to decide the facts from the evidence

1 that you've heard and seen in the courtroom. That is  
2 your job and yours alone. I play no part in finding  
3 the facts. You should not take anything I may have  
4 said or done during the trial as indicating what I  
5 think of the evidence, or what I think about what your  
6 verdict should be.

7 Your second duty is to apply the law  
8 that I give you to the facts. You must apply my  
9 instructions carefully. Each of the instructions is  
10 important, and you must apply all of them. You must  
11 not substitute or follow your own notion, or opinion  
12 about what the law is, or ought to be. You must apply  
13 the law that I give you, whether you agree with it or  
14 not.

15 Whatever your verdict, it will have to  
16 be unanimous. All of you will have to agree on it, or  
17 there will be no verdict. In the jury room, you will  
18 discuss the case among yourselves, but ultimately each  
19 of you will have to make up his or her own mind. This  
20 is a responsibility that each of you has, and that you  
21 cannot avoid.

22 During your deliberations, you must not  
23 communicate with, or provide any information to anyone  
24 by any means about the case. You may not use any  
25 electronic device or media such as the telephone, a

1 cell phone, smart phone, iPhone, blackberry, or a  
2 computer, the Internet, any Internet service, any text  
3 or instant messaging service, any Internet chat room,  
4 blog, or website such as Facebook, MySpace, or Linked  
5 In, YouTube, or Twitter to communicate to anyone any  
6 information about the case, or to conduct any research  
7 about the case until I accept your verdict at the end  
8 of your deliberations.

9 In other words, you cannot talk to  
10 anyone on the phone, correspond with anyone, or  
11 electronically communicate with anyone about the case.  
12 You can only discuss the case in the jury room with  
13 your fellow jurors during deliberations.

14 You may not use these electronic means  
15 to investigate or communicate about the case, because  
16 it is important that you decide the case based solely  
17 on the evidence presented in the courtroom. You're  
18 only permitted to discuss the case with your fellow  
19 jurors during deliberations, because they have seen  
20 and heard the same evidence you have.

21 In our judicial system, it is important  
22 that you are not influenced by anything or anyone  
23 outside of this courtroom.

24 Perform these duties fairly and  
25 impartially. Do not allow sympathy, prejudice, fear,



1 or public opinion to influence you. You should also  
2 not be influenced by any person's race, or color,  
3 religion, national ancestry, gender, sexual  
4 orientation, profession, occupation, celebrity status,  
5 economic circumstances, or position in life or the  
6 community.

7 The Defendants pled not guilty to the  
8 offenses charged. They are presumed to be innocent.  
9 They started the trial with a clean slate with no  
10 evidence against them. The presumption of innocence  
11 stays with them unless and until the Government has  
12 presented evidence that overcomes that presumption by  
13 convincing you that they are guilty of the offenses  
14 charged beyond a reasonable doubt.

15 The presumption of innocence requires  
16 that you find the Defendants not guilty unless you are  
17 satisfied that the Government has proved guilty beyond  
18 a reasonable doubt.

19 The presumption of innocence means that  
20 the Defendants have no burden, or obligation, to  
21 present any evidence at all, or to prove that they are  
22 not guilty. The burden, or obligation, of proof is on  
23 the Government to prove that the Defendants are  
24 guilty, and this burden stays with the Government  
25 throughout the trial.

1           In order for you to find the Defendants  
2 guilty of the offenses charged, the Government must  
3 convince you that the Defendants are guilty beyond a  
4 reasonable doubt. That means that the Government must  
5 prove each and every element of the offenses charged  
6 beyond a reasonable doubt.

7           A definition may not be -- a Defendant  
8 -- pardon me, a Defendant may not be convicted based  
9 on suspicion or conjecture, but only on evidence  
10 proving guilt beyond a reasonable doubt.

11           Proof beyond a reasonable doubt does  
12 not mean proof beyond all possible doubt, or to a  
13 mathematical certainty. Possible doubts or doubts  
14 based on conjecture, speculation, or hunch are not  
15 reasonable doubts.

16           A reasonable doubt is a fair doubt  
17 based on reason, logic, common sense, or experience.  
18 It is a doubt that an ordinary, reasonable person has  
19 after carefully weighing all of the evidence, and is a  
20 doubt of the sort that would cause him, or her, to  
21 hesitate in matters of importance in his or her own  
22 life. It may arise from the evidence, or from the  
23 lack of evidence, or from the nature of the evidence.

24           If having now heard all of the evidence  
25 you are convinced that the Government proved each and

1 every element of the offenses charged beyond a  
2 reasonable doubt, you should return a verdict of  
3 guilty for that offense.

4           However, if you have a reasonable doubt  
5 about one or more of the elements of the offense  
6 charged, then you must return a verdict of not guilty  
7 of that offense.

8           Now, what is the evidence from which  
9 you will decide the case? First of all, it is only  
10 the evidence that you saw and heard in the courtroom.  
11 Do not let rumors, suspicions, or anything else that  
12 you may have seen or heard outside of court influence  
13 your decision in any way.

14           The evidence from which you are to find  
15 the facts consists of the following: first, one, the  
16 testimony of the witnesses; two, documents and other  
17 things received in received in -- received as  
18 exhibits; and three, any fact or testimony that was  
19 stipulated. That is, formally agreed to by the  
20 parties.

21           The following are not evidence: one,  
22 the indictment; two, statements and arguments of the  
23 lawyers for the parties; three, questions by the  
24 lawyers, and questions that I may have asked. The  
25 evidence is the question and the answer taken

1 together. Four, objections by lawyers, including  
2 objections in which the lawyers stated facts; five,  
3 any testimony that I struck, or told you to disregard;  
4 and finally, anything you may have seen or heard  
5 outside of the courtroom.

6 You should use your common sense in  
7 weighing the evidence. Consider it in light of your  
8 everyday experience with people and events, and give  
9 it whatever weight you believe it deserves. If your  
10 experience and common sense tell you that certain  
11 evidence reasonably leads to a conclusion, you may  
12 reach that conclusion.

13 As I told you in my preliminary  
14 instruction, the rules of evidence control what can be  
15 received into evidence. During the trial, lawyers  
16 objected when they thought that evidence was offered  
17 that was not permitted by the rules of evidence.  
18 These objections simply meant that the lawyers were  
19 asking me to decide whether the evidence should be  
20 allowed under the applicable rules.

21 You should not be influenced by the  
22 fact that an objection was made. You should also not  
23 be influenced by my rulings on objections, or any  
24 sidebar conferences that you may have overheard.

25 When I overruled an objection, the

1 question was answered, or the exhibit was received as  
2 evidence, and you should treat that testimony or  
3 exhibit like any other. When I allowed the evidence,  
4 the testimony, or the exhibits for a limited purpose  
5 only, I instructed you to consider that evidence only  
6 for that limited purpose, and you must do that.

7 When I sustained an objection to a  
8 question, the question was not answered, or the  
9 exhibit was not received as evidence, you must  
10 disregard the question or the exhibit entirely when  
11 that occurred. Do not think about or guess what the  
12 witness might have said in answer to the question, and  
13 do not think about or guess what the exhibit might  
14 have shown.

15 Sometimes a witness may have already  
16 answered before a lawyer objected, or before I ruled  
17 on the objection. If that happened, and if I  
18 sustained the objection, you must disregard the answer  
19 that was given.

20 Also, if I ordered that some testimony  
21 or other evidence be stricken, or removed from the  
22 record, you must disregard the evidence. When you are  
23 deciding the case, you must not consider or be  
24 influenced in any way by the testimony or other  
25 evidence that I told you to disregard.

1                   There was a little of that in the case,  
2 ladies and gentlemen, and you'll remember when I gave  
3 you that instruction.

4                   Now, although the lawyers may have  
5 called your attention to certain facts or factual  
6 conclusions that they thought were important, what the  
7 lawyers said is not evidence, and is not binding on  
8 you. It is your own recollection and interpretation  
9 of the evidence that controls your decision in this  
10 case.

11                  Also, do not assume from anything I may  
12 have done, or said, during the trial that I have any  
13 opinion about any of the issues in the case, or about  
14 what your verdict should be.

15                  Now, I told you in my preliminary jury  
16 instructions that there were two types of evidence,  
17 direct evidence and circumstantial, or indirect,  
18 evidence. You may use both types of evidence in  
19 reaching your verdict.

20                  Direct evidence is simply evidence  
21 which, if believed, directly proves a fact. An  
22 example of direct evidence occurred when a witness  
23 testifies about something a witness knows from his or  
24 her own senses something the witness has seen,  
25 touched, heard, or smelled.

1                   Circumstantial evidence is evidence  
2                   which, if believed, indirectly proves a fact. It is  
3                   evidence that proves one or more facts from which you  
4                   could reasonably find, or infer, the existence of some  
5                   other fact, or facts. A reasonable inference is  
6                   simply a deduction or conclusion that reason,  
7                   experience, and common sense lead you to make from the  
8                   evidence.

9                   A reasonable inference is not a  
10                  suspicion or a guess. It is a reasoned, logical  
11                  decision to find that a disputed fact exists on the  
12                  basis of another fact.

13                  For example, and you've heard this  
14                  several times, but I'll repeat it, if someone walked  
15                  into the courtroom wearing a wet rain coat and  
16                  carrying a wet umbrella, that would be circumstantial  
17                  or indirect evidence from which you could reasonably  
18                  find, or conclude, that it was raining outside. You  
19                  would not have to find that it was raining, but you  
20                  could.

21                  Sometimes, different inferences may be  
22                  drawn from the same set of facts. The Government may  
23                  ask you to draw one inference, and the Defense may ask  
24                  you to draw another. You, and you alone, must decide  
25                  what reasonable inferences you will draw based on all

1 the evidence, and your reason, experience, and common  
2 sense.

3           You should consider all of the evidence  
4 that is presented in the trial, direct and  
5 circumstantial. The law makes no distinction between  
6 the weight you should give to either direct or  
7 circumstantial evidence. It is for you to decide how  
8 much weight to give to the evidence.

9           Also, as I said in my preliminary  
10 instructions at the beginning of the trial, in  
11 deciding what the facts are, you must decide what  
12 testimony you believe, and what testimony you do not  
13 believe. You are the sole judges of the credibility  
14 or believability of the witnesses. Credibility refers  
15 to whether a witness is worthy of belief. Was the  
16 witness truthful? Was the witness's testimony  
17 accurate? You may believe everything a witness says,  
18 or only part of it, or none of it.

19           You may decide whether to believe a  
20 witness based on his or her behavior and manner of  
21 testifying, the explanations the witness gave, and all  
22 of the other evidence in the case, just as you would  
23 in any important matter where you are trying to decide  
24 if a person is truthful, straightforward, and accurate  
25 in his or her recollection. In deciding the question



1 of credibility, remember to use your common sense,  
2 your good judgment, and your experience.

3 Now, in deciding what to believe, you  
4 may consider a number of factors, and I'll mention  
5 some of them. One, the opportunity and ability of the  
6 witness to see, or hear, or know the things about  
7 which the witness testified. Two, the quality of the  
8 witness's knowledge, understanding, and memory.  
9 Three, the witness's appearance, behavior, and manner  
10 while testifying. Four, whether the witness has an  
11 interest in the outcome of the case, or any motive,  
12 bias, or prejudice. Five, any relation the witness  
13 may with a party in the case, and any effect the  
14 verdict may have on the witness. And six, whether the  
15 witness said or wrote anything before trial that was  
16 different from the witness's testimony in court.  
17 Seven, whether the witness's testimony was consistent  
18 or inconsistent with other evidence that you believe.  
19 And eight, any other factors that bear on whether the  
20 witness should be believed.

21 Inconsistencies, or discrepancies in a  
22 witness's testimony, or between the testimony of  
23 different witnesses, may or may not cause you to  
24 disbelieve a witness's testimony. Two or more persons  
25 witnessing an event may simply see or hear it

1 differently. Mistaken recollection, like failure to  
2 recall, is a common human experience. In weighing the  
3 effect of an inconsistency, you should also consider  
4 whether it was about a matter of importance or an  
5 insignificant detail. You should also consider  
6 whether the inconsistency was innocent or intentional.

7           You are not required to accept  
8 testimony, even if the testimony was not contradicted,  
9 and the witness was not impeached. You may decide  
10 that the witness is not worthy of belief because of  
11 the witness's bearing and demeanor, or because of the  
12 inherent improbability of the testimony, or for other  
13 reasons that are sufficient to you. After you make  
14 your own judgment about the believability of a  
15 witness, you can then attach to that witness's  
16 testimony the importance or weight that you think it  
17 deserves.

18           The weight of the evidence to prove a  
19 fact does not necessarily depend on the number of  
20 witnesses who testified, or the quantity of the  
21 evidence that was presented. What is more important  
22 than numbers or quantity is how believable the  
23 witnesses were, and how much weight you think their  
24 testimony deserves.

25           Now, while the Government is required

1 to prove the Defendant's guilt -- guilty beyond a  
2 reasonable doubt, the Government is not required to  
3 present all possible evidence related to the case, or  
4 to produce all possible witnesses who may have some  
5 knowledge about the facts of the case. In addition,  
6 as I've explained, the Defendants are not required to  
7 present any evidence or produce any witnesses.

8 In this case, the Defendants, or one  
9 Defendant presented evidence, and one Defendant  
10 presented a witness. The Defendants are not required  
11 to present all possible evidence related to the case,  
12 or to produce all possible witnesses who might have  
13 some knowledge about the facts of the case.

14 During the trial, you saw and heard  
15 audio and video recordings of the Defendants and  
16 others made without their knowledge. These recordings  
17 were made with the consent and agreement of one of the  
18 parties to the audio and visual recordings. The use  
19 of this procedure to gather evidence is lawful, and  
20 the recordings may be used by either party.

21 Now, the rules of evidence ordinarily  
22 do not permit witnesses to state their own opinions  
23 about important questions in a trial, but there are  
24 exceptions to those rules. In this case, you heard  
25 testimony from several witnesses who offered an

1 opinion. Because of their knowledge, skill,  
2 experience, training, or education, they were  
3 permitted to offer an opinion, and the reasons for  
4 that opinion. These witnesses are called expert  
5 witnesses.

6 The opinion these witnesses stated  
7 should receive whatever weight you think appropriate,  
8 given all the other evidence in the case. In weighing  
9 this opinion testimony, you may consider the witness's  
10 qualifications, the reasons for the witness's  
11 opinions, and the reliability of the information  
12 supporting the witness's opinions, as well as the  
13 other factors discussed in these instructions for  
14 weighing the testimony of witnesses.

15 You may disregard the opinions entirely  
16 if you decide that their opinions are not based on  
17 sufficient knowledge, or skill, or experience, or  
18 training, or education. You may also disregard the  
19 opinions if you include that the reasons given in  
20 support of the opinions are not sound, or if you  
21 conclude that the opinions are not supported by the  
22 facts shown by the evidence, or if you think that the  
23 opinions are outweighed by other evidence.

24 During the trial, you heard testimony  
25 of witnesses and arguments by counsel that the

1 Government did not use specific investigative  
2 techniques regarding the recovery of surveillance  
3 footage at the store. You may consider these facts in  
4 deciding whether the Government has met its burden of  
5 proof, because as I told you, you should look to all  
6 of the evidence, or lack of evidence, in deciding  
7 whether the Defendants are guilty. However, there is  
8 no legal requirement that the Government use any of  
9 these specific investigative techniques, or all  
10 possible techniques to prove the case. There is no  
11 requirement to use specific investigative techniques  
12 regarding the recovery of surveillance camera footage  
13 at the store. Your concern, as I have said, is to  
14 determine whether or not the evidence admitted in the  
15 case proves the Defendants' guilt beyond a reasonable  
16 doubt.

17 Now, the Government and the Defendants  
18 have agreed that certain stipulated facts are true.  
19 You should -- and you've heard those stipulations,  
20 they've been presented. You should, therefore, treat  
21 these stipulations -- stipulated facts as having been  
22 true. You are not required to do so, however, since  
23 you are the sole judges of the facts.

24 You heard the testimony of a number of  
25 law enforcement officers. The fact that a witness is

1 employed by a law -- as a law enforcement officer does  
2 not mean that his or her testimony necessarily  
3 deserves more or less consideration, or greater or  
4 lesser weight than that of any other witness. At the  
5 same time, it is quite legitimate for defense counsel  
6 to try to attack the believability of a law  
7 enforcement witness on the ground that his or her  
8 testimony may be colored by a personal or professional  
9 interest in the outcome of the case. You must decide,  
10 after reviewing all of the evidence, whether you  
11 believe the testimony of the law enforcement witness,  
12 and how much weight, if any, it deserves.

13 Also with respect to the believability  
14 of a witness's testimony, if you believe that a  
15 witness knowingly testified falsely concerning any  
16 important matter, you may distrust the witness's  
17 testimony concerning other matters. You may reject  
18 all of the testimony, or you may disregard -- no, let  
19 me start that again. You may reject all of the  
20 testimony, or you may accept such parts of the  
21 testimony that you believe are true, and give it such  
22 weight as you think it deserves.

23 The Defendants did not testify in this  
24 case. A Defendant has an absolute constitutional  
25 right not to testify. The burden of proof remains

1 with the prosecution, the Government, throughout the  
2 entire trial, and it never shifts to the Defendant. A  
3 Defendant is never required to prove that he is  
4 innocent. You must not attach any significance to the  
5 fact that the Defendants did not testify. You must  
6 not draw any adverse inference against them because  
7 they did not take the witness stand. Do not consider  
8 for any reason at all the fact that the Defendants did  
9 not testimony (sic), and do not discuss that fact  
10 during your deliberations, or let it influence your  
11 decision in any way.

12 Now, you have heard testimony that  
13 after the crime was supposed to have been committed,  
14 Donnie Smith ran from the police officers. If you  
15 believe that Donnie Smith ran from the police  
16 officers, then you must consider this conduct, along  
17 with all of the other conduct, in deciding whether the  
18 Government has proved beyond a reasonable doubt that  
19 he committed the crimes charged.

20 This conduct may indicate that he  
21 thought he was guilty of the crimes charged, and was  
22 trying to avoid punishment. On the other hand,  
23 sometimes an innocent person may run from the police  
24 for some other reason. Whether or not this evidence  
25 causes you to find that Donnie Smith was conscious of

1 his guilt of the crimes charged, and whether that  
2 indicates he committed the crimes charged, is entirely  
3 up to you as the sole judges of the facts.

4 Those are my general instructions, and  
5 now I will instruct you on the charges against the  
6 Defendants in the two counts of the indictment. And  
7 before I do, I'll remind you that although I'm reading  
8 these instructions to you, I will give you copies of  
9 my instructions, and the instructions will have a  
10 table of contents that should enable you to, if you  
11 have any questions, to check the table of contents,  
12 re-read what I said on the issue, and hopefully that  
13 will answer your question. But if it doesn't, you can  
14 send me a note asking a question that you are unable  
15 to answer yourselves. I will then present it to  
16 counsel, and we'll decide how to handle it, call you  
17 back into the courtroom, and give you an answer.

18 So I don't want you to be concerned now  
19 and think, "Oh, this is an awful lot for me to  
20 remember, my heavens." You'll get a lot of  
21 assistance, including copies of the charge.

22 The Defendants are charged in an  
23 indictment with violating the law, violating federal  
24 law. Count I of the indictment charges Donnie Smith,  
25 Abid Stevens, and Maurice Quinn with robbery, which



1 interferes with interstate commerce, and aiding and  
2 abetting in violation of a provision -- two provisions  
3 of the United States Code, 18 United States Code,  
4 Sections 1951 and 2.

5 The robbery will be referred to in  
6 these instructions as robbery, which interferes with  
7 interstate commerce, or Hobbs Act robbery. Hobbs Act,  
8 because that's the name of the statute under which the  
9 indictment was brought.

10 Count II of the indictment charges the  
11 three Defendants with using, carrying, and brandishing  
12 a firearm during, and in relation to, a crime of  
13 violence, and aiding and abetting in violation of 18  
14 United States Code, Sections 924(c) and 2.

15 The crime of violence to which  
16 reference is made in Count II of the indictment is the  
17 Hobbs Act robbery that was charged in Count I of the  
18 indictment.

19 As I explained at the beginning of the  
20 trial, an indictment is just the formal way of  
21 specifying the exact crime the Defendants are accused  
22 of committing. An indictment is simply a description  
23 of the charge against a Defendant. It is an  
24 accusation only. An indictment is not evidence of  
25 anything, and you should not give any weight to the

1 fact that the Defendants have been indicted in making  
2 your decision in this case.

3 The indictment charges that the  
4 offenses were committed on or about a certain date,  
5 that date is March 22nd, 2019. The Government does  
6 not have to prove with certainty the exact date of the  
7 alleged offense. It is sufficient if the Government  
8 proves beyond a reasonable doubt that the offense, or  
9 offenses, were committed on a date reasonably near the  
10 date alleged.

11 Now, in this case, there are multiple  
12 Defendants charged with the same offenses. The  
13 Defendants, Donnie Smith, Abid Stevens, and Maurice  
14 Quinn are all charged with more than one offense.  
15 Each offense is charged in a separate count of the  
16 indictment.

17 The number of offenses charged is not  
18 evidence of guilt, and this should not influence your  
19 decision in any way. Also, in our system of justice,  
20 guilt or innocence is personal and individual. You  
21 must separately consider the evidence against each  
22 Defendant on each offense charged, and you must return  
23 a separate verdict for each Defendant on each offense.

24 For each Defendant and offense, you  
25 must decide whether the Government has proved beyond a

1 reasonable doubt that the particular Defendant is  
2 guilty of the particular offense. And this will be  
3 individuated for you by three separate verdict sheets.  
4 I'll explain that at the end of these instructions.

5 Your decision or on any one Defendant,  
6 or any one offense, whether guilty or not guilty,  
7 should not influence your decision on any of the other  
8 Defendants or offenses. Each offense and each  
9 Defendant should be considered separately.

10 Now, I will instruct you on Hobbs Act  
11 robbery. In order to sustain its burden of proof for  
12 the crime of interstate commerce -- of -- let me start  
13 that again. In order to sustain its burden of proof  
14 for the crime of interfering with interstate commerce  
15 by robbery, which I will also refer to as Hobbs Act  
16 robbery, as charged in Count I of the indictment, the  
17 Government must prove the following three essential  
18 elements beyond a reasonable doubt: first, that  
19 Donnie Smith, Abid Stevens, and Maurice Quinn took  
20 from employees of RD Grocery the property described in  
21 Count I of the indictment. And I -- that property was  
22 \$100, and a gun described as a Glock, and described in  
23 more detail in the indictment.

24 Second, that Donnie Smith, Abid  
25 Stevens, and Maurice Quinn did so knowingly and

1 willfully by robbery.

2 And third, that as a result of Donnie  
3 Smith, Abid Stevens, and Maurice Quinn's actions,  
4 interstate commerce, specifically an item moving in  
5 interstate commerce, was obstructed, delayed, or  
6 affected.

7 Now, in connection with the description  
8 of Hobbs Act robbery, and specifically the definition  
9 of the term robbery, which is the second element of  
10 the crime. Robbery is the unlawful taking of personal  
11 property from the person, or in the presence of  
12 another against his will, by means of actual or  
13 threatened force or violence, or fear of injury,  
14 whether immediately or in the future, to his person or  
15 property, or property in his custody or possession, or  
16 the person or property of a relative, or member of his  
17 family, or of anyone in his company at the time of the  
18 taking or obtaining.

19 Now, with respect to the first element  
20 of the crime of Hobbs Act robbery, unlawful taking by  
21 force, violence, or fear, I'll give you some guidance,  
22 I'll define that term.

23 The Government must prove beyond a  
24 reasonable doubt that Donnie Smith, Abid Stevens, and  
25 Maurice Quinn unlawfully took property from employees

1 of the RD Grocery against their will by actual or  
2 threatened force, violence, or fear of injury, whether  
3 immediately or in the future. You must determine  
4 whether Donnie Smith, Abid Stevens, and Maurice Quinn  
5 obtained the property by using any of these unlawful  
6 means as set forth in the indictment.

7 The Government need not prove that  
8 force, violence, and fear were all used or threatened.  
9 The Government satisfies its burden of proving an  
10 unlawful taking if you unanimously agree that Donnie  
11 Smith, Abid Stevens, and Maurice Quinn employed any of  
12 these methods. That is, the Government satisfies its  
13 burden only if you all agree concerning the particular  
14 method used by Donnie Smith, Abid Stevens, and Maurice  
15 Quinn.

16 In considering whether Donnie Smith,  
17 Abid Stevens, and Maurice Quinn used or threatened to  
18 use force, violence, or fear, you should give these  
19 words their common and ordinary meaning in  
20 understanding -- and understand them as normally -- as  
21 you normally would.

22 A threat may be made verbally, or by  
23 physical gesture. Whether a statement or physical  
24 gesture by Donnie Smith, Abid Stevens, and Maurice  
25 Quinn actually was a threat depends upon the

1 surrounding facts.

2 And I'm going to define for you the  
3 term "fear of injury," part of the first element of  
4 the crime of Hobbs Act robbery.

5 Fear exists if a victim experiences  
6 anxiety, concerns, or worry over expected personal,  
7 physical harm. The fear must be reasonable under the  
8 circumstances, existing at the time of the Defendants'  
9 actions. Your decision whether Donnie Smith, Abid  
10 Stevens, and Maurice Quinn used or threatened fear of  
11 injury involves a decision about the state of mind of  
12 Joel Ventura and Emmanuel Sanchez at the time of  
13 Donnie Smith, Abid Stevens, and Maurice Quinn's  
14 actions.

15 It is obviously impossible to prove  
16 directly a person's subjective feeling. You cannot  
17 look into a person's mind to see what his state of  
18 mind is or was, but a careful consideration of the  
19 circumstances and evidence should enable you to decide  
20 whether Joel Ventura or Emmanuel Sanchez were in fear,  
21 and whether this fear was reasonable.

22 Looking at the situation and the  
23 actions of the person, or persons, in question may  
24 help you determine what his state of mind was. You  
25 can consider this kind of evidence, which is called

1 circumstantial evidence, in deciding whether Donnie  
2 Smith, Abid Stevens, and Maurice Quinn obtained  
3 property through the use of, or threat -- the use of  
4 threat or fear -- let me repeat that last sentence.

5 You can consider this kind of evidence,  
6 which is called circumstantial evidence, in deciding  
7 whether Donnie Smith, Abid Stevens, and Maurice Quinn  
8 obtained property through the use of threat or fear.

9 You've also heard the testimony of Joel  
10 Ventura and Emmanuel Sanchez describing their state of  
11 mind, that is, how they felt about giving up the  
12 property. This testimony was allowed to help you  
13 decide whether the property was obtained by fear. You  
14 should consider this testimony for that purpose only.  
15 You may also consider the relationship between Donnie  
16 Smith, Abid Stevens, and Maurice Quinn on the one  
17 hand, and Joel Venture and Emmanuel Sanchez on the  
18 other in deciding whether the element of fear exists.  
19 However, even a friendly relationship between the  
20 parties does not preclude you from finding that fear  
21 exists.

22 Now, the final element of the crime of  
23 Hobbs Act robbery is interstate commerce. The third  
24 element that the Government must prove beyond a  
25 reasonable doubt in order to obtain a conviction for

1 Hobbs Act robbery is that the conduct of the  
2 Defendants must affect, or could have affected,  
3 interstate commerce.

4 Conduct affects interstate commerce if  
5 it in any way interferes with, changes, or alters the  
6 movement, or transportation, or flow of goods,  
7 merchandise, money, or other property in commerce  
8 between, or among, the states. The effect can be  
9 minimal. It is not necessary to prove that Defendants  
10 intended to obstruct, delay, or interfere with  
11 interstate commerce, or that the purpose of the  
12 alleged crime was to affect interstate commerce.

13 Further, you do not have to decide  
14 whether the effect on interstate commerce was to be  
15 harmful or beneficial to a particular business, or to  
16 commerce in general. You do not even have to find  
17 that there was an actual effect on interstate  
18 commerce. All that is required to prove this element  
19 is that the natural consequences of the offense  
20 potentially caused an effect on interstate commerce to  
21 any degree, however minimal, or slight.

22 And now, because I've been talking for  
23 45 minutes, we're going to do what I traditionally do  
24 in the case where the instructions on the law, my  
25 charge, are long. We're going to have a standup.



1 We're going to stop, we're going to stand up, shake  
2 the kinks out, and hopefully refresh yourselves. And  
3 we'll do that now. Everybody. Besides I'm getting a  
4 little tired.

5 MR. WITTELS: Judge, do you mind if I  
6 run out for second? I'll be right back. One minute.

7 THE COURT: Not exactly. But I guess  
8 I'll have to say yes.

9 Maybe we should do this. Does anyone  
10 need a break? I don't get votes in open court from  
11 jurors, but if anyone needs a break, one hand is  
12 enough, and we'll recess for 10 minutes.

13 I see no hands. We'll give you a break  
14 a little later, around midafternoon.

15 (Asides)

16 THE COURT: I might add, while we're  
17 waiting, that I got the idea of the standups from the  
18 movie Crocodile Dundee. I don't know whether anyone  
19 saw this movie. He didn't do standups, he did what he  
20 referred to as a walkabout, and this is my equivalent  
21 of a walkabout, shake the kinks out and clear the head  
22 a little bit.

23 MR. WITTELS: Thank you, Your Honor.

24 THE COURT: Oh, you're welcome. And  
25 now we can return to the charge.

1           You've heard argument regarding  
2     accomplice liability, it's also referred to as aiding  
3     and abetting. A person may be guilty of an offense  
4     because he personally committed the offense himself,  
5     or because he aided and abetted another person in  
6     committing the offense. A person who has aided and  
7     abetted another person in committing an offense is  
8     often called an accomplice. The person whom the  
9     accomplice aids and abets is known as the principal.

10           In this case, the Government alleges  
11     that Donnie Smith, Abid Stevens, and Maurice Quinn  
12     aided and abetted someone, including a co-Defendant,  
13     in committing the crime of Hobbs Act robbery as  
14     charged in the indictment. In order to find a  
15     Defendant guilty of Hobbs Act robbery, because they  
16     aided and abetted someone in committing this offense,  
17     you must find that the Government proved beyond a  
18     reasonable doubt each of the following four  
19     requirements.

20           One, that someone, including one of the  
21     Defendants, committed the offense charged by  
22     committing each of the elements of the offense charged  
23     as I've explained those elements to you in these  
24     instructions, and those would be all of the elements  
25     of Hobbs Act robbery.

1           Second, that the Defendant knew that  
2     the offence charged was going to be committed, or was  
3     being committed by someone, including a co-Defendant.

4           Third, that the Defendant knowingly did  
5     some act for the purpose of aiding, or assisting  
6     someone, including a co-Defendant, in committing the  
7     specific offense charged, and with the intent that  
8     someone, including a co-Defendant, commit that  
9     specific offense.

10          And forth and finally, that the  
11     Defendant performed an act in furtherance of the  
12     offense charged.

13          In deciding whether the Defendant had  
14     the required knowledge and intent to satisfy the third  
15     requirement for aiding and abetting, and that is the  
16     requirement of proving that aider and abettor aided or  
17     assisted someone else in committing the offense, you  
18     may consider both direct and circumstantial evidence,  
19     including the Defendant's words and actions, and the  
20     other facts and circumstances.

21          However, evidence that the Defendant  
22     merely associated with persons involved in a criminal  
23     venture, or was merely present, or was merely a  
24     knowing spectator during the commission of the offense  
25     is not enough for you to define -- for you to find

1 that the Defendant was guilty as an aider and abettor.  
2 If the evidence shows that the Defendant knew the  
3 offense was being committed, or was about to be  
4 committed, but does not also prove beyond a reasonable  
5 doubt that it was that Defendant's intent and purpose  
6 to aid or assist, or otherwise associate themselves  
7 with the offense, you may not find that Defendant  
8 guilty of the offense as an aider and abettor.

9 The Government must prove beyond a  
10 reasonable doubt that the Defendant in some way  
11 participated in the offense committed by someone,  
12 including a co-Defendant, as something that Defendant  
13 wished to bring about, and to make succeed in order  
14 for that Defendant to be an aider and abettor.

15 To show that the Defendant performed an  
16 act in furtherance of the offense charged in order to  
17 satisfy the fourth requirement, the Government needs  
18 to show some affirmative participation by the  
19 Defendant, which at least encouraged someone,  
20 including a co-Defendant, to commit the offense  
21 charged. That is, you must find that Defendant's act  
22 did in some way aid or assist someone, including a co-  
23 Defendant, to commit the offense.

24 The Defendant's act need not further  
25 aid or assist every part of the offense charged. It

1 is enough if the Defendant's act further aids or  
2 assists only one or some part, or phase of the events.  
3 Also, the Defendant's acts need not themselves be  
4 against the law.

5 And that's a second way of establishing  
6 guilt. The Government can establish guilt if it  
7 proves beyond a reasonable doubt all of the elements  
8 of Hobbs Act robbery, and all of the elements that I  
9 have just instructed you on with respect to accomplice  
10 liability, or liability as an aider and abettor.

11 There is in this case a third way a  
12 Government can prove guilt beyond a reasonable doubt,  
13 and it's referred to -- well, it's involved in  
14 offenses committed by co-conspirators.

15 Count I of the indictment charges that  
16 on or about March 22nd, 2019, in this district,  
17 Defendants Donnie Smith, Abid Stevens, and Maurice  
18 Quinn committed a robbery, which interferes, or  
19 interfered, with interstate commerce. The Government  
20 may prove Defendants Abid Smith -- I'm sorry Donnie  
21 Smith, Abid Stevens, and Maurice Quinn guilty of the  
22 offense by proving that Donnie Smith, Abid Stevens,  
23 and Maurice Quinn personally committed the crime of  
24 Hobbs act robbery.

25 The Government may also prove

1 Defendants Smith, Stevens, and Quinn guilty of the  
2 offense based on the legal rule that each member of a  
3 conspiracy is responsible for crimes and other acts  
4 committed by the other members, as long as those  
5 crimes and acts were committed to help further, or  
6 achieve, the objective of the conspiracy, and were  
7 reasonably foreseeable to the Defendants Donnie Smith,  
8 Abid Stevens, and Maurice Quinn as a necessary, or  
9 natural consequence of the agreement.

10 In other words, under certain  
11 circumstances, the act of one conspirator may be  
12 treated as the act of all. This means that all the  
13 conspirators may be convicted of a crime committed by  
14 any one or more of them, even though they did not all  
15 personally participate in that crime themselves.

16 In order for you to find Donnie Smith,  
17 Abid Stevens, and Maurice Quinn guilty of Hobbs Act  
18 robbery as charged in Count I, based on this legal  
19 rule, the legal rule regarding the liability as a  
20 conspirator, you must find that the Government proved  
21 beyond a reasonable doubt each of the four  
22 requirements that follow.

23 First, that a conspiracy existed  
24 between Donnie Smith, Abid Stevens, and Maurice Quinn,  
25 and that Donnie Stevens (sic), Maurice Quinn, -- I'm

1       sorry, and that Donnie Stevens, Abid Stevens, and  
2       Maurice Quinn were members of that conspiracy.

3               So the first element is the Government  
4       must prove the conspiracy existed, and that Defendants  
5       Smith, Stevens, and Quinn were members of that  
6       conspiracy.

7               Second, that while Donnie Smith, Abid  
8       Stevens, and Maurice Quinn were still members of the  
9       conspiracy, one of them committed the offense charged  
10      in Count I by committing each of the elements of that  
11      offense as I've explained those elements to you.

12              Third, that Donnie Smith, Abid Stevens,  
13      or Maurice Quinn committed this offense within the  
14      scope of the unlawful agreement between them, and to  
15      further or -- and to help further or achieve the  
16      objective of the conspiracy.

17              And fourth, that this offense was  
18      reasonably foreseeable to, or reasonably anticipated  
19      by Defendants Donnie Smith, Abid Stevens, and Maurice  
20      Quinn as a necessary or natural consequence of the  
21      unlawful agreement. The Government does not have to  
22      prove that Donnie Smith, Abid Stevens, and Maurice  
23      Quinn specifically agreed, or knew that this offense  
24      would be committed. However, the Government must  
25      prove that the offense was reasonably foreseeable to

1 Donnie Smith, Abid Stevens, and Maurice Quinn as a  
2 member of the conspiracy, and within the scope -- and  
3 within the scope of the agreement, as Donnie Smith,  
4 Abid Stevens, and Maurice Quinn understood it.

5 It is a federal crime for two or more  
6 persons to agree or conspire to commit any offense  
7 against the United States, even if they never actually  
8 achieve their objective.

9 A conspiracy is a kind of criminal  
10 partnership. In order for you to find Donnie Smith,  
11 Abid Stevens, and Maurice Quinn guilty of conspiracy  
12 to commit an offense against the United States, you  
13 must find that the Government proved beyond a  
14 reasonable doubt each of the following four elements:

15 First, that two or more persons agreed  
16 to commit an offense against the United States as  
17 charged in Count I of the indictment. That is the  
18 Hobbs Act robbery. I've explained the elements of  
19 that offense in these instructions.

20 Second, the Government must prove  
21 beyond a reasonable doubt that Donnie Smith, Abid  
22 Stevens, and Maurice Quinn were parties to, or members  
23 of, that agreement.

24 Third, the Government must prove that  
25 Donnie Smith, Abid Stevens, and Maurice Quinn joined



1 the agreement, or conspiracy, knowing of its objective  
2 to commit an offense against the United States, and  
3 intending to join together to achieve that objective.  
4 That is, that Donnie Smith, Abid Stevens, or Maurice  
5 Quinn shared a unity of purpose, and the intent to  
6 achieve a common goal, or objective, to commit an  
7 offense against the United States.

8 And fourth and finally, that at some  
9 point during the existence of the agreement, or  
10 conspiracy, at least one of its members performed an  
11 overt act in order to further the objectives of the  
12 agreement.

13 Now, I will explain each of these  
14 elements in more detail.

15 The first element of the crime of  
16 conspiracy is the existence of an agreement. The  
17 Government must prove beyond a reasonable doubt that  
18 two or more persons knowingly, and intentionally,  
19 arrived at a mutual understanding, or agreement,  
20 either spoken or unspoken, to work together to achieve  
21 the overall objective of the conspiracy to commit the  
22 offense of interfering with interstate commerce by  
23 robbery.

24 The Government does not have to prove  
25 the existence of a formal or written agreement, or an

1 expressed oral agreement, spelling out the details of  
2 the understanding. The Government also does not have  
3 to prove that all of the members of the conspiracy  
4 directly met, or discussed between themselves their  
5 unlawful objective, or agreed to all of the details,  
6 or agreed to what the means were by which the  
7 objective would be accomplished.

8 The Government is not even required to  
9 prove that all the people named in the indictment were  
10 in fact parties to the agreement, or that all members  
11 of the alleged conspiracy were named, or that all  
12 members of the conspiracy are even known. What the  
13 Government must prove beyond a reasonable doubt is  
14 that two or more persons in some way or manner arrived  
15 at some type of agreement, mutual understanding, or  
16 meeting of the minds to accomplish a common and  
17 unlawful purpose.

18 You may consider both direct and  
19 circumstantial evidence in deciding whether the  
20 Government has proved beyond a reasonable doubt that  
21 an agreement or mutual understanding existed.

22 You may find that the existence of a  
23 conspiracy based on reason -- you may find the  
24 existence of a conspiracy based on reasonable  
25 inferences drawn from the actions and statements of

1 the alleged members of the conspiracy, from the  
2 circumstances surrounding the scheme, and from  
3 evidence of related facts and circumstances, which  
4 prove that the activities of the participants in the  
5 criminal venture could not have been carried out,  
6 except as the result of a preconceived agreement,  
7 scheme, or understanding.

8 Now, if you find that a criminal  
9 agreement or conspiracy existed, then in order to find  
10 Donnie Smith, Abid Stevens, and Maurice Quinn guilty  
11 of conspiracy, you must also find that the Government  
12 proved beyond a reasonable doubt that Defendants  
13 Smith, Stevens, and Quinn knowingly and intentionally  
14 joined that agreement, or conspiracy, during its  
15 existence.

16 The Government must prove that  
17 Defendants Smith, Stevens, and Quinn knew the goal or  
18 objective of the agreement, or conspiracy, and  
19 voluntarily joined it during its existence, intending  
20 to achieve the common goal or objective, and to work  
21 together with the other alleged conspirators toward  
22 that goal or objective.

23 The Government need not prove that  
24 Donnie Smith, Abid Stevens, and Maurice Quinn knew  
25 everything about the conspiracy, or that they knew

1 everyone involved in it, or that they were a member  
2 from the beginning. The Government also does not have  
3 to prove that Donnie Smith, Abid Stevens, and Maurice  
4 Quinn played a major or substantial role in the  
5 conspiracy.

6           You may consider both direct and  
7 circumstantial evidence in deciding whether Defendants  
8 Smith, Stevens, and Quinn joined the conspiracy, knew  
9 of its criminal objective, and intended to further  
10 that objective. Evidence which shows that Defendants  
11 Smith, Stevens, and Quinn only knew about the  
12 conspiracy, or only kept bad company by associating  
13 with members of the conspiracy, or was only present  
14 when it was discussed, or when a crime was committed  
15 is not sufficient to prove that Defendants Smith,  
16 Stevens, and Quinn were members of the conspiracy,  
17 even if they approved of what was happening, or did  
18 not object to it.

19           Likewise, evidence showing that  
20 Defendants Smith, Stevens, and Quinn may have done  
21 something that happened to help a conspiracy does not  
22 necessarily prove that they joined the conspiracy.

23           You may, however, consider this  
24 evidence with all of the other evidence in deciding  
25 whether the Government proved beyond a reasonable

1 doubt that Donnie Smith, Abid Stevens, and Maurice  
2 Quinn joined the conspiracy.

3 The third element of the conspiracy is  
4 the mental state or states of the Defendants. In  
5 order to find Donnie Smith, Abid Stevens, and Maurice  
6 Quinn guilty of conspiracy, you must find that the  
7 Government proved beyond a reasonable doubt that  
8 Defendants Smith, Stevens, and Quinn joined the  
9 conspiracy knowing of its objective, and intending to  
10 help further, or achieve, that objective.

11 That is, the Government must prove:  
12 one, that Donnie Smith, Abid Stevens, and Maurice  
13 Quinn knew of the objective, or goal, of the  
14 conspiracy; two, that Donnie Smith, Abid Stevens, and  
15 Maurice Quinn joined the conspiracy, intending to help  
16 further, or achieve, that goal, or objective; and  
17 three, that Defendants Smith, Stevens, and Quinn, and  
18 at least one -- no. That Defendants Smith, Stevens,  
19 and Quinn shared a unity of purpose toward the  
20 objective of that goal.

21 Let me --

22 (Pause)

23 THE COURT: There was a phrase that was  
24 supposed to have been deleted. It's applicable only  
25 when there is only a single Defendant, and we'll

1 delete it in the copy that is presented to the jury.  
2 We'll talk about that at sidebar when I finish.

3 You may consider both direct and  
4 circumstantial evidence, including Donnie Smith, Abid  
5 Stevens, and Maurice Quinn's words or conduct, and  
6 other facts and circumstances in deciding whether  
7 Donnie Smith, Abid Stevens, and Maurice Quinn had the  
8 required knowledge and intent.

9 With regard to the fourth element of  
10 conspiracy, overt acts, the Government must prove  
11 beyond a reasonable doubt that during the existence of  
12 the conspiracy, at least one member of the conspiracy  
13 performed at least one of the overt acts described in  
14 the indictment for the purposes of furthering, or  
15 helping to achieve, the objective of the conspiracy.

16 Take a look at the paragraph of the  
17 charge that follows. It does not seem to me that that  
18 is applicable, and that was to have been deleted, but  
19 we can go to sidebar and give the jury another  
20 standup.

21 I'm on page 36, and it's the second  
22 paragraph. Take a look at it, if there's agreement  
23 that it should not be read, I won't read it. If  
24 there's disagreement, we go to sidebar.

25 Does anyone disagree that paragraph

1 two, the second paragraph on page 36 should not be  
2 read because it's inapplicable?

3 (Pause)

4 MR. ECKERT: I think we're in agreement  
5 that it should not be read, Your Honor.

6 THE COURT: Everyone? Does anyone  
7 disagree with that?

8 (Chorus of no)

9 THE COURT: All right. And it just  
10 slipped into the charge. It was supposed to have been  
11 removed. It applies when there's a single -- well, it  
12 applies when there's a different set of circumstances.  
13 It doesn't apply here.

14 Next, with respect to conspiracy, the  
15 Government is not required to prove that any of the  
16 members of the conspiracy were successful in achieving  
17 any or all of the objectives of a conspiracy.

18 You may find Donnie Smith, Abid  
19 Stevens, and Maurice Quinn guilty of conspiracy if you  
20 find that the Government proved beyond a reasonable  
21 doubt the elements I've explained, even if you find  
22 that the Government did not prove that any of the  
23 conspirators actually committed any other offense  
24 against the United States.

25 Conspiracy is a criminal offense

1 separate from the offense that was the objective of  
2 the conspiracy. Conspiracy is complete without the  
3 commission of that offense.

4 Next, with respect to conspiracy.  
5 Evidence has been admitted in this case that certain  
6 persons who were -- who are alleged to be co-  
7 conspirators --

8 (Pause)

9 THE COURT: No, I'm going to modify  
10 that charge as well. I'm deleting the first sentence  
11 of that charge.

12 The acts or statements of any member of  
13 a conspiracy are treated as the acts or statements of  
14 all the members of a conspiracy if these acts or  
15 statements were performed or spoken during the  
16 existence of the conspiracy, and to further the  
17 objectives of the conspiracy.

18 Therefore, you may consider as evidence  
19 against Donnie Smith, Abid Stevens, and Maurice Quinn  
20 any acts done or statements made by any members of the  
21 conspiracy during the existence of, and to further the  
22 objectives of the conspiracy. You may consider these  
23 acts and statements even if they were done and made in  
24 Donnie Smith, Abid Stevens, and Maurice Quinn's  
25 absence and without their knowledge.



1                   As with all the evidence presented in  
2 the case, it is for you to decide whether you believe  
3 this evidence and how much weight to give it.

4                   That concludes the charge on Count I,  
5 Hobbs Act robbery, including aiding and abetting Hobbs  
6 Act robbery and conspiracy. I'm now going to turn to  
7 Count II, which charges a separate crime against the  
8 three Defendants, using or carrying a firearm during  
9 any crime of violence. And I think we'll take another  
10 break. Let's stand up.

11                   You know what I think we'll do, we'll  
12 take more than a standup. Let's recess for 10  
13 minutes.

14                   THE BAILIFF: All rise.

15                   (Jury out)

16                   THE COURT: Be seated, everyone. One  
17 of those deletions was required, because the  
18 Government did not charge conspiracy in the  
19 indictment, and the other involved the statement of a  
20 co-conspirator other than the Defendants. It's really  
21 designed for a single Defendant charge. And we'll  
22 delete what I said we'd delete. When we go to  
23 sidebar, I'll go over it so that you know what it was  
24 we deleted.

25                   And now we'll move into Count II. And

1 on that note, we are in recess.

2 THE BAILIFF: All rise.

3 THE COURT: Ten minutes.

4 (Recessed at 3:18 p.m.; reconvened at 3:40 p.m.)

5 THE CLERK: Please be seated.

6 (Pause)

7 THE CLERK: All rise.

8 THE COURT: Be seated, everyone.

9 All right. We will continue with the  
10 charge.

11 I'm now going to charge you on Count II  
12 of the indictment. Count II of the indictment charges  
13 the Defendants Donnie Smith, Abid Stevens, and Maurice  
14 Quinn with using and carrying a firearm during a crime  
15 of violence, which is in violation of federal law.

16 The offense charged in Count I of the  
17 indictment, the Hobbs Act robbery, is a crime of  
18 violence. In order to find that Donnie Smith, Abid  
19 Stevens, and Maurice Quinn guilty of the offense  
20 charged in Count II of the indictment, you must find  
21 that the Government has proved each of the following  
22 three elements beyond a reasonable doubt:

23 First, that Donnie Smith, Abid Stevens,  
24 or Maurice Quinn committed the crime of Hobbs Act  
25 robbery as charged in Count I of the indictment.

1                   And second, that during and in relation  
2                   to the commission of the crime, an individual  
3                   Defendant knowingly used or carried a firearm.

4                   The term "uses or carries a firearm"  
5                   means having a firearm or firearms available to assist  
6                   or aid in the commission of the crime of interference  
7                   with interstate commerce by robbery. "Use" means more  
8                   than mere possession of a firearm by a person who  
9                   commits a crime. To establish use, the Government  
10                  must show active employment of the firearm.

11                  If the Defendant did not either  
12                  disclose or mention the firearm, or actively employ  
13                  it, the Defendant did not use the firearm.

14                  "Carry" means that the Defendant had  
15                  the firearm on his person.

16                  Third, the Government must prove beyond  
17                  a reasonable doubt -- this is the third element, that  
18                  an individual Defendant used or carried the firearm  
19                  during and in relation to the crime of interference  
20                  with interstate commerce by robbery, that is Hobbs Act  
21                  robbery.

22                  "During and in relation to" means that  
23                  the firearm must have had some purpose or effect with  
24                  respect to interference with interstate commerce by  
25                  robbery. The firearm must have at least facilitated,

1 or had the potential of facilitating interference with  
2 interstate commerce by robbery.

3 In determining whether an individual  
4 Defendant used or carried a firearm in relation to the  
5 interference with interstate commerce by robbery  
6 crime, you may consider all of the factors received in  
7 evidence in the case, including the nature of the  
8 underlying crime, interference with interstate  
9 commerce by robbery, how close that Defendant was to  
10 the firearm in question, the usefulness of the firearm  
11 to interference with interstate commerce by robbery,  
12 and the circumstances surrounding the presence of the  
13 firearm.

14 If -- the Government is not required to  
15 show that an individual Defendant actually displayed  
16 or fired the weapon, however the Government must prove  
17 beyond a reasonable doubt that the firearm was in that  
18 Defendant's possession, or under their control at the  
19 time of the Hobbs Act -- at the time the crime of  
20 Hobbs Act robbery was committed, and that the firearm  
21 facilitated, or at least had the potential in  
22 facilitating the interference with interstate commerce  
23 by robbery.

24 Now, the term "firearm" means any  
25 weapon which will expel, or is designed to, or may

1 readily be converted to expel a projectile by the  
2 action of an explosive. The term includes the frame  
3 or receiver of any such weapon.

4 Now, I charged you with respect to  
5 accomplice liability, or aiding and abetting with  
6 respect to Count I, the Hobbs Act robbery Count. I'm  
7 now going to charge you on accomplice liability with  
8 respect to Count II, the using or carrying a firearm  
9 during and in relation to a crime of violence count.

10 A person may be guilty of an offense  
11 because he personally committed the offense himself,  
12 or because he aided and abetted another person in  
13 committing the offense. A person who has aided and  
14 abetted another person in committing an offense is  
15 often called an accomplice, and the person whom the  
16 accomplice aids and abets is known as the principal.  
17 Same instructions that I gave you with respect to  
18 Hobbs Act robbery, it gets a little different as we  
19 proceed.

20 In this case, the Government alleges  
21 that Donnie Smith, Abid Stevens, and Maurice Quinn  
22 aided and abetted someone, including a co-defendant,  
23 in committing the crime of using or carrying a firearm  
24 during and in relation to a crime of violence as  
25 charged in the indictment in Count II.

1           In order to find the Defendant guilty  
2 of using and carrying a firearm during a crime of  
3 violence, because they aided and abetted someone in  
4 committing this offense, you must find that the  
5 Government proved beyond a reasonable doubt each of  
6 the following four requirements.

7           First, that someone, including one of  
8 the Defendants, committed the offense charged by  
9 committing each of the elements of the offense charged  
10 as I've explained those elements to you, and those  
11 elements would be the Hobbs Act robbery elements, the  
12 crime of violence.

13           Second, that the Defendant knew that  
14 the offense charged was going to be committed, or was  
15 being committed by someone, including a co-defendant.

16           Third, that the Defendant was an active  
17 participant in using or carrying a firearm during and  
18 in relation to a robbery that interfered with  
19 interstate commerce, and also had advanced knowledge  
20 that one of the principles would use a firearm during  
21 and in relation to that robbery.

22           And fourth, that the Defendant  
23 performed an act in furtherance of the offenses  
24 charged.

25           To find that the Defendant was an

1 active participant in using or carrying a firearm  
2 during and in relation to a crime of violence, you  
3 must find that the Government proved that the  
4 Defendant knowingly did some act for the purpose of  
5 aiding or assisting someone, including a co-Defendant,  
6 in committing the Hobbs Act robbery, and with the  
7 intent that someone, including a co-Defendant, commit  
8 that offense.

9 To find that the Defendant had advanced  
10 knowledge that one of the principals would use or  
11 carry a firearm during and in relation to the  
12 interference with interstate commerce by robbery, you  
13 must find that the Government proved that the  
14 Defendant had knowledge of the firearm at a time when  
15 they could do something with that knowledge, such as  
16 walking away from the criminal venture.

17 "Advanced knowledge" means knowledge  
18 beforehand such that the Defendant had a realistic  
19 opportunity to leave the scene of the robbery after  
20 learning that a firearm would be used or carried.

21 In deciding whether the Defendant had  
22 the required knowledge and intent to satisfy the third  
23 requirement for aiding and abetting, you may consider  
24 both direct and circumstantial evidence, including the  
25 Defendant's words and actions, and the other facts and

1 circumstances. However, evidence that the Defendant  
2 merely associated with persons involved in a criminal  
3 venture, or was merely present, or was merely a  
4 knowing spectator during the commission of the offense  
5 is not enough for you to find that the Defendant was  
6 guilty as an aider or a better.

7 If the evidence shows that the  
8 Defendant knew that the offense was being committed,  
9 or was about to be committed, but does not also prove  
10 beyond a reasonable doubt that it was that Defendant's  
11 intent and purpose to aid or assist, or otherwise  
12 associate themselves with the offense, you may not  
13 find that Defendant guilty of the offense as an aider  
14 and abettor.

15 The Government must prove beyond a  
16 reasonable doubt that the Defendant in some way  
17 participated in the offense committed by someone,  
18 including a co-Defendant, as something that Defendant  
19 wished to bring about, and to make succeed in order  
20 for that Defendant to be an aider and abettor.

21 To show that the Defendant performed an  
22 act in furtherance of the offense charged to satisfy  
23 the fourth requirement, the Government needs to show  
24 some affirmative participation by the Defendant, which  
25 at least encouraged someone, including a co-Defendant,



1 to commit the offense. That is, you must find that  
2 the Defendant's act did in some way aid or assist  
3 someone, including a co-Defendant, to commit the  
4 offense.

5 The Defendant's act need not further  
6 aid or assist every part of the offense charged, it is  
7 enough if the Defendant's act further aid or assist  
8 only one or some part, or phase of the offense.

9 Also, the Defendant's acts need not  
10 themselves be against the law, thus the Defendant's  
11 act -- acts need not further aid or assist the use or  
12 carrying of a firearm. It is enough if the  
13 Defendant's acts further aid or assist the underlying  
14 crime of using or carrying a firearm during and in  
15 relation to a crime of violence.

16 Now, I'm going to charge you on motive.  
17 Motive is not an element of the offenses with which  
18 the Defendants are charged. Proof of bad motive is  
19 not required to convict. Further, proof of bad motive  
20 alone does not establish that the Defendants are  
21 guilty, and proof of good motive alone does not  
22 establish that the Defendants are not guilty.  
23 Evidence of the Defendant's motive may however help  
24 you find the Defendant's intent.

25 Intent and motive are different

1 concepts. Motive is what prompts a person to act.  
2 Intent refers only to the state of mind with which the  
3 particular act is done. Personal advancement and  
4 financial gain, for example, our motives for much of  
5 human conduct. However, these motives may prompt one  
6 person to intentionally do something perfectly  
7 acceptable, while prompting another person to  
8 intentionally do an act that is a crime.

9 Now, I will instruct you on the defense  
10 of justification. It's applicable only to one  
11 Defendant, Donnie Smith.

12 Donnie Smith has raised the defense  
13 that he was justified by necessity in committing the  
14 offenses charged in Counts I and II of the indictment.

15 If you find that the Government proved  
16 beyond a reasonable doubt that Donnie Smith committed  
17 the offenses charged, then you must consider whether  
18 Donnie Smith's actions were justified by necessity as  
19 I will define that for you.

20 If you find that the Government proved  
21 that Donnie Smith committed the offenses charged, and  
22 you also find that Donnie Smith proved that he was  
23 justified by necessity in committing the offenses,  
24 then you must find Donnie Smith not guilty of the  
25 charges.

1           To find that Donnie Smith's actions  
2           were justified by necessity, and therefore that he is  
3           not guilty of the offenses charged in Counts I and II  
4           of the indictment, you must find that Donnie Smith  
5           proved by a preponderance of the evidence each of the  
6           following.

7           First, that Donnie Smith was under an  
8           immediate unlawful threat of death or serious bodily  
9           injury to himself or to others.

10          Second, that Donnie Smith had a well-  
11          rounded reasonable belief that the threat would be  
12          carried out if he did not commit the offenses.

13          Third, that Donnie Smith's criminal  
14          action was directly caused by the need to avoid the  
15          threatened harm, and that Donnie Smith had no  
16          reasonable lawful opportunity to avoid the threatened  
17          harm without committing the offenses. That is, that  
18          Donnie Smith had no reasonable lawful opportunity both  
19          to refuse to do the criminal act, and also to avoid  
20          the threatened harm.

21          And fourth, that Donnie Smith had  
22          recklessly placed himself in a situation -- I'm sorry.  
23          Wrong. Fourth, strike that, disregard it.

24          Fourth, that Donnie Smith had not  
25          recklessly placed himself in a situation in which it

1 was probable that he would be put in a position of  
2 having to choose whether to engage in criminal act.

3 Now, Donnie Smith has the burden of  
4 proving the defense of justification necessity by a  
5 preponderance of the evidence.

6 Preponderance of the evidence is a  
7 lower standard than proof beyond a reasonable doubt.  
8 To prove something by a preponderance of the evidence,  
9 means to prove that it is more likely true than not  
10 true. If you put all of the credible or believable  
11 evidence that is favorable to Donnie Smith, and the  
12 credible evidence that is favorable to the Government  
13 on opposite sides of a scale, the scale would have to  
14 tip somewhat in Donnie Smith's favor in order for you  
15 to find that Donnie Smith is not guilty because of  
16 justification necessity.

17 However, if the scale tips in favor of  
18 the Government, or if the credible evidence appears to  
19 be equally balanced, or if you cannot say on which  
20 side the credible evidence is heavier, then you must  
21 decide that Donnie Smith has not proved the defense of  
22 justification necessity by a preponderance of the  
23 evidence.

24 In making this determination, you  
25 should consider all of the evidence presented during

1 the trial regardless of who offered it. You should  
2 evaluate the evidence and its credibility in  
3 accordance to the instructions I gave you earlier.  
4 You should also remember that the fact that Donnie  
5 Smith asserts this defense does not relieve the  
6 Government of the burden of proving all of the  
7 offenses charged beyond a reasonable doubt.

8 Now, we're just about at the end of my  
9 charge. I'm going to instruct you now on  
10 deliberations.

11 That concludes my charge explaining the  
12 law regarding the testimony and other evidence in the  
13 two offenses charged. Now, let me explain some things  
14 about your deliberations in the jury room, and your  
15 possible verdicts.

16 First, the first thing you should do in  
17 the jury room is to choose someone to be your  
18 foreperson. This person will speak for you here in  
19 court. He or she will also preside over your  
20 discussions. However, the views and vote of the  
21 foreperson are entitled to no greater weight than  
22 those of any other juror.

23 Second, I want to remind you that your  
24 verdict, whether it is guilty or not guilty, must be  
25 unanimous. All of you must agree. To find that

1 Donnie Smith, Abid Stevens, and Maurice Quinn are  
2 guilty of an offense, every one of you must agree that  
3 the Government has overcome the presumption of  
4 innocence with evidence that proves each element of  
5 that offense beyond a reasonable doubt.

6 To find Donnie Smith, Abid Stevens, and  
7 Maurice Quinn not guilty, every one of you must agree  
8 that the Government has failed to convince you beyond  
9 a reasonable doubt.

10 Third, if you decide that the  
11 Government has proved Donnie Smith, Abid Stevens, and  
12 Maurice Quinn guilty, then it will be my  
13 responsibility to decide what the appropriate  
14 punishment should be. You should never consider the  
15 possible punishment in reaching your verdict.

16 Fourth, as I have said before, your  
17 verdict must be based only on the evidence received in  
18 this case and the law as I am giving it to you. You  
19 should not take anything I may have said or done  
20 during the trial as indicating what I think of the  
21 evidence, or what I think your verdict should be.  
22 What the verdict should be is the exclusive  
23 responsibility of you, the jurors.

24 Fifth, now that all the evidence is in,  
25 the arguments are completed, and once I have finished

1 these instructions, you're free to talk about the case  
2 in the jury room. In fact, it is your duty to talk  
3 with each other about the evidence, and to make every  
4 reasonable effort you can to reach unanimous  
5 agreement. Talk with each other. Listen carefully  
6 and respectfully to each other's views, and keep an  
7 open mind as you listen to what your fellow jurors  
8 have to say.

9 Do not hesitate to change your mind if  
10 you are convinced that other jurors are right and that  
11 your original position was wrong. But, do not ever  
12 change your mind just because other jurors see things  
13 differently, or just to get the case over with.

14 In the end, your vote must be exactly  
15 that, your own vote. It is important for you to reach  
16 a unanimous agreement, but only if you can do so  
17 honestly and in good conscience.

18 Listen carefully to what other jurors  
19 have to say, and then decide for yourself if the  
20 Government has proven the Defendants guilty beyond a  
21 reasonable doubt.

22 No one will be allowed to hear your  
23 discussions in the jury room, and no record will be  
24 made of what you say. You should all feel free to  
25 speak your minds.

1 Remember, if you elected to take notes  
2 during the trial, your notes should only be used as  
3 memory aids. You should not give your notes greater  
4 weight than your independent recollection of the  
5 evidence. You should rely upon your own independent  
6 recollection of the evidence, or lack of evidence, and  
7 you should not be unduly influenced by the notes of  
8 other jurors. Notes are not entitled to any more  
9 weight than the memory or impression of each juror.

10 Six, once you start deliberating, do  
11 not talk, communicate with, or provide any information  
12 about the case, by any means, to the court officials,  
13 or to me, or to anyone else except each other.

14 During your deliberations, you may not  
15 use any electronic device or media such as telephones,  
16 cell phones, smart phone, iPhone, blackberry, or  
17 computer, the Internet, any Internet service, or any  
18 text or instant messaging service, or any Internet  
19 chat room, blog, or website, such as Facebook,  
20 MySpace, LinkedIn, YouTube, or Twitter to communicate  
21 to anyone any information about the case, or to  
22 conduct any research about the case.

23 Seventh, if you have any questions or  
24 messages, your foreperson should write them down on a  
25 piece of paper, sign them, and then give them to the



1 court official, who will give them to me. I will  
2 first talk to the lawyers about what you have asked,  
3 and I will respond as soon as I can. In the  
4 meanwhile, if possible, you should continue your  
5 deliberations.

6 If you want to see any of the exhibits  
7 that are admitted in evidence and not provided to you,  
8 you may send me a message, and if I can legally do so,  
9 I will have those exhibits provided to you.

10 One more thing about messages, do not  
11 ever write down, or tell me, or tell anyone how you or  
12 anyone else voted. That should stay secret until you  
13 have finished your deliberations. If you have  
14 occasion to communicate with me while you are  
15 deliberating, do not disclose the number of jurors who  
16 have voted to convict or acquit on any offense.

17 And now, the verdict forms. There are  
18 three verdict forms and they have an interrogatory,  
19 which is a question. You should take these forms to  
20 the jury room. When you've reached your unanimous  
21 verdicts, the foreperson should write the verdicts on  
22 the forms, date and sign them, and return them to the  
23 courtroom. And you do this by notifying the court  
24 officer, who will be in attendance just outside the  
25 jury room.

1           If you decide the Government has proved  
2 the Defendants' guilty of any or all of the offenses  
3 charged beyond a reasonable doubt, say so by having  
4 your foreperson mark the appropriate place on the  
5 forms.

6           If you decide that the Government has  
7 not proven the Defendant guilty of some or all of the  
8 offenses charged beyond a reasonable doubt, say so by  
9 having the foreperson mark the appropriate place on  
10 the forms.

11           Now, the forms are not very  
12 complicated. There's a form for each Defendant, so  
13 you'll have a separate verdict form for each  
14 Defendant. And these verdict forms will -- well, they  
15 do provide, and I'm quoting, "The jury unanimously  
16 agrees to the following verdict for Counts I and II of  
17 the indictment, as to Defendant," and there's one for  
18 Dante (sic) Smith, Abid Stevens, and Maurice Quinn.

19           And then there's a description of Count  
20 I, and it's in the block to the left of the form, and  
21 it reads, "On Count I of the indictment, charging  
22 robbery which interferes with interstate commerce by"  
23 -- "which interferes with interstate commerce, and  
24 aiding and abetting, on or about March 22nd, 2019, we,  
25 the Jury, unanimously find the Defendant" -- and,

1 again, it's each one, Dante Smith, Abid Stevens,  
2 Maurice Quinn, there's one for each of them -- "guilty  
3 or not guilty." There are two columns, guilty or not  
4 guilty, and two lines, in whichever line you find  
5 applicable.

6 And then there's a description of Count  
7 II. "On Count II of the indictment, charging using  
8 and carrying a firearm during and in relation to a  
9 crime of violence, and aiding and abetting, on or  
10 about March 22nd, 2019, we, the Jury, unanimously find  
11 the Defendant," and again, Dante Stevens -- I'm sorry  
12 Dante Smith, Abid Stevens, and Maurice Quinn, there's  
13 a separate verdict form for each of them, and, again,  
14 the same two columns, guilty and not guilty.

15 When you answer those two questions,  
16 you'll find an instruction at the bottom of the first  
17 page. And it reads, "If you find," and again, it's  
18 each of the Defendants, "not guilty of Count II,"  
19 that's the count that charges using or carrying a  
20 firearm in connection with a crime of violence, "your  
21 deliberations are concluded," and it says, "you should  
22 sign the verdict form." That's wrong. The foreperson  
23 should sign the verdict form, and we'll correct these  
24 verdict forms.

25 If you find the Defendants guilty -- if

1 you find any of the Defendants guilty of the crime  
2 charged in Count II, you must answer an additional  
3 question called an interrogatory, and that  
4 interrogatory, again, it's applicable just to Count  
5 II, and it reads, "Do you unanimously find that the  
6 Government proved beyond a reasonable doubt that  
7 Defendants," and again, there's one for each of them,  
8 "brandished a firearm when committing this offense?"  
9 And this offense refers to the offense charged in  
10 Count II, using or carrying a firearm during and in  
11 relation to a crime of violence. And in order to  
12 answer this interrogatory, there are two columns, yes  
13 or no, and you check the applicable place.

14 After you have completed, and if after  
15 the foreperson has completed this jury verdict form in  
16 accordance with my instructions, the foreperson should  
17 sign and date the form, and the jury should notify the  
18 court official, who will be outside the jury room  
19 door, that you're ready to return to the courtroom.

20 I should add that in answering this  
21 interrogatory, this question, about brandishing, as in  
22 deciding your verdict, you must be unanimous, and in  
23 order to find that offense involves certain conduct,  
24 you must all be satisfied that the Government proved  
25 that conduct beyond a reasonable doubt.

1           And I'll go over this question, or the  
2     interrogatory, in just a little more detail. The jury  
3     interrogatory asks whether if Defendant is guilty of  
4     using or carrying a firearm during and in relation to  
5     a crime of violence, whether he brandished the firearm  
6     in a course of committing this offense.

7           To "brandish" means to display all or  
8     part of the firearm, or otherwise make the presence of  
9     the firearm known to another person in order to  
10    intimidate that person, regardless of whether the  
11    firearm is directly visible to that person. You  
12    should answer "yes" or "no" to this question.

13           And now I have -- I'm just about at the  
14    end.

15           You should also be aware that after you  
16    complete your deliberations as I have instructed you,  
17    there may be some additional evidence presented very,  
18    very brief, and, I mean, measured in minutes rather  
19    than hours, an additional matter which you -- on which  
20    you will have to deliberate.

21           All right. That concludes my  
22    instructions. I now must go to sidebar to find  
23    whether the attorneys have any other instructions they  
24    wish me to give you.

25           In the meanwhile, why don't you take

1 another stretch, standup, if you care to.

2 (Sidebar on the record)

3 THE COURT: First of all, we've  
4 substituted pages -- for the pages on which I told  
5 you, on which you agreed, that there were problems.  
6 On page 35, conspiracy element three, mental state,  
7 the end of the first paragraph, we deleted "and at  
8 least one other alleged conspirator."

9 Second, page 36, fourth element of the  
10 conspiracy charge, overt acts. We deleted the second  
11 paragraph.

12 And third, page 38, acts and statements  
13 of co-conspirators. I deleted the first sentence  
14 because it was inapplicable. And those pages will be  
15 substituted. There's no objection to any of that, no?  
16 Am I correct, Mr. Eckert?

17 MR. ECKERT: No.

18 THE COURT: Mr. Patterson?

19 MR. PATTERSON: No.

20 MS. MEEHAN: Not to the changes, but to  
21 the overall Pinkerton charge.

22 THE COURT: Yeah.

23 MS. MEEHAN: (Indiscernible - 4:15:42)  
24 to that, yes, (indiscernible - 4:15:43).

25 THE COURT: There was an issue on page

1 39, something didn't work. I have some (indiscernible  
2 - 4:16:02). Ryan, anything?

3 MR. ECKERT: I have.

4 THE COURT: I made one other  
5 correction.

6 MR. ECKERT: I don't have an objection.

7 THE COURT: Well, I thought -- I think  
8 it's -- I think it's this, the second paragraph,  
9 guilty of the offense charged, it should be Count II  
10 of the indictment. I think that better explains.

11 All right. Now, let's talk about any  
12 other issues with respect to the indictment.

13 Mr. Eckert, do you have any objections  
14 -- I'm sorry. I said, "the indictment," I meant the  
15 charge. Do you have any other issues with respect to  
16 the charge?

17 MR. ECKERT: Your Honor, I think the  
18 Counsel (indiscernible - 4:17:18) the flight  
19 instruction. The Court read "must" instead of "may,"  
20 so (indiscernible - 4:17:22) -- we'd defer to Mr.  
21 Patterson, but I believe we would ask that  
22 (indiscernible - 4:17:26).

23 MR. PATTERSON: That's correct, Your  
24 Honor, jury instruction number 14, first paragraph.

25 THE COURT: What page?

1 MS. MEEHAN: 18.

2 MR. PATTERSON: Page 18.

3 THE COURT: All right.

4 MR. PATTERSON: Second paragraph, the  
5 first line. Your Honor said, "must," rather than,  
6 "may."

7 THE COURT: Oh, it's "may."

8 MR. PATTERSON: Right. And I would --  
9 I'd be okay with just rereading that first line if  
10 Your Honor doesn't want to reread the whole charge.

11 THE COURT: I'll redo that.

12 MR. PATTERSON: And one other minor  
13 thing, on page 51, just when Your Honor was -- when  
14 Your Honor was reviewing the verdict form with the  
15 jury, at one time you referred to Donnie Smith as  
16 Dante Smith. I would just ask that that be clarified.  
17 That's all.

18 THE COURT: Okay. I can do that.  
19 Yeah. Okay.

20 MR. ECKERT: And of course there'd be  
21 no objection to that, Your Honor.

22 MR. PATTERSON: And I have nothing  
23 further.

24 THE COURT: And you're okay on  
25 everything else except for this (indiscernible



1 4:18:57) .

2 MR. PATTERSON: Yes, Your Honor.

3 THE COURT: All right.

4 MR. WITTELS: Well, I think we renew  
5 our challenge to the Pinkerton charge, Judge, which we  
6 have to do at this point.

7 THE COURT: Yes.

8 MR. WITTELS: We believe that there was  
9 no evidence against of a conspiracy upon which to base  
10 the Pinkerton charge, and even if there was some  
11 scintilla of evidence, that giving a Pinkerton charge  
12 is unduly confusing a burden to the jury, and  
13 therefore should not have been given.

14 THE COURT: All right.

15 MS. MEEHAN: I join in that.

16 MR. PATTERSON: And I would join in  
17 also, Your Honor.

18 THE COURT: Right. I won't tell you  
19 where I stand.

20 Any other objections?

21 MR. PATTERSON: No.

22 MR. WITTELS: No.

23 MS. MEEHAN: Yes, Your Honor.  
24 Accomplice liability as to that 924(c), on behalf of  
25 Maurice Quinn, I would renew my objection for the

1 reasons we stated on the record -- well, during  
2 several charge conferences, and the only thing I would  
3 note, Your Honor, when we submitted the joint  
4 instruction, the Government and Mr. Quinn, as to one  
5 of the elements, it says, "You must unanimously agree  
6 on the identity of the principal or principals," which  
7 is not part of the current charge that Your Honor --

8 THE COURT: That's not part of the law  
9 either.

10 MS. MEEHAN: Well, I'm not --

11 THE COURT: At least as the Third  
12 Circuit (indiscernible - 4:20:20).

13 MS. MEEHAN: So, well, I'll just add  
14 that for my objection to that, and that I think that  
15 the aiding and abetting as the 924(c) in its current  
16 forms is a little bit --

17 THE COURT: It's what?

18 MS. MEEHAN: -- confusing. It's  
19 confusing.

20 THE COURT: Well, I added -- I tailored  
21 it to your objection. Your objection was based  
22 primarily on the opportunity to withdraw, whether he  
23 was a knowing participant in conduct involving guns,  
24 and I took from your proposed charge the paragraph  
25 that I thought was most important.

1 I found that the rest of that charge  
2 was inapplicable to the case in view of the  
3 Government's position that they were not saying that  
4 Quinn was the only aider and abettor, and that others  
5 could be other aiders and abettors.

6 In any event, I'll address that.

7 MS. MEEHAN: Very well. And then the  
8 verdict slip, Your Honor, we went through this before  
9 that our position -- my position is that if Mr. Quinn  
10 -- if the jury finds unanimously Mr. Quinn not guilty  
11 of Count I, that they should be instructed that they  
12 cannot move to Count II, and Your Honor addressed that  
13 earlier.

14 THE COURT: Well, in thinking about  
15 that, it seems to me that if no one is convicted of  
16 Count II, there's no crime of violence and no one can  
17 be convicted -- I'm sorry.

18 MS. MEEHAN: Of Count I.

19 MR. ECKERT: Count I.

20 THE COURT: If no one is convicted of  
21 Hobbs Act robbery in Count I --

22 MS. MEEHAN: Right.

23 THE COURT: -- then there is no crime  
24 of violence, and I don't think the Government can  
25 prevail. But that's not where we are now.

1                   While I'm on that issue, do you agree  
2                   with that, Mr. Eckert?

3                   MR. ECKERT: I would just ask for a set  
4                   -- or, an hour to look it over. I think it make sense  
5                   what the Court's saying (indiscernible - 4:22:06) --

6                   THE COURT: Well, it's not really in  
7                   the case, yet.

8                   MR. ECKERT: Right, right.

9                   THE COURT: Now, it might be. And then  
10                  I'll have to come to grips with it. It's a very  
11                  interesting point, but as I read the law, I don't  
12                  think the Government has to find, and this is  
13                  hypothetically, Maurice Quinn guilty of Count I in  
14                  order to be able to consider his guilt or innocence of  
15                  the crime charged in Count II.

16                  Someone, in my judgment, must be found  
17                  guilty of Hobbs Act robbery in order to find anyone  
18                  guilty of the crime of using or carrying a firearm  
19                  during and in relation to the Hobbs Act robbery.

20                  MS. MEEHAN: That's the problem with  
21                  that issue of who is the principal to what?

22                  THE COURT: I'm sorry?

23                  MS. MEEHAN: That is the problem with  
24                  the jury being confused about which Defendant is which  
25                  principal in which offense.

1                   THE COURT: Well, it doesn't matter.  
2     It seems to me that if anyone is convicted of Hobbs  
3     Act robbery, they can all be convicted of using or  
4     carrying a firearm during and in relation of that  
5     robbery.

6                   But it's an issue presented by the way  
7     the Government tried the case. I have made my  
8     position clear --

9                   MS. MEEHAN: Very well.

10                  THE COURT: -- on that, and your  
11     objection is noted.

12                  MS. MEEHAN: Thank you, Your Honor.

13                  THE COURT: Now, those two forms that  
14     you handed out didn't get anywhere except into my file  
15     there. They're not filed.

16                  In other words, you handed out two  
17     forms with inked corrections regarding your charge.  
18     At one point for charge it was the -- well, it was the  
19     point on aiding and abetting Count II, using or  
20     carrying a firearm. Do you -- have you filed  
21     (indiscernible - 4:23:59)?

22                  MS. MEEHAN: I can file those, Your  
23     Honor.

24                  THE COURT: File them. You have them.

25                  MS. MEEHAN: The problem was that I was

1 going to file it as a joint -- a joint recommendation  
2 to the Court as to the aiding and abetting accomplice  
3 liability on 924(c), and then when we got to court and  
4 the Government said, "Oh, no, we're not agreeing," I  
5 didn't know how to file that, but I'll just file it as  
6 Defendant's proposed --

7 THE COURT: Okay. That's fine.

8 MS. MEEHAN: Okay. Thank you.

9 THE COURT: I have one other thing. As  
10 I read this, the instruction at the bottom of page 1  
11 of the verdict form, and this is for all. First of  
12 all, it says, "You should sign the verdict form." It  
13 should read, "Your foreperson should sign the verdict  
14 form."

15 And then it should read, "After your  
16 foreperson has completed this jury verdict form, the  
17 foreperson should sign and date." I'm going to change  
18 it to reflect that.

19 Any objection to that? I'm sorry.

20 (Chorus of no)

21 THE COURT: All right. And what we'll  
22 do, we'll make arrangements. I don't know whether  
23 they're going to want -- they're not going to want to  
24 stay tonight.

25 MR. ECKERT: No.

1 THE COURT: We'll make arrangements  
2 tomorrow morning to have that (indiscernible -  
3 4:25:53), the IT person, instruct them on how to use  
4 the laptop in the (indiscernible - 4:26:00). And I'll  
5 let them go, after we administer the oath to the court  
6 officer, and then we'll chat about some follow-up.

7 MR. ECKERT: Okay.

8 THE COURT: Anything else we have to  
9 discuss now?

10 MR. ECKERT: No, Your Honor.

11 MR. WITTELS: No.

12 MR. PATTERSON: No.

13 THE CLERK: Yes, yes. We -- just one  
14 quick thing to think about in the middle of your  
15 (indiscernible - 4:26:20). Your Alternate, our  
16 Alternate that's remaining has expressed a wish to  
17 kind of be released from the building. She does live  
18 in Philadelphia and she can be on call where she would  
19 not be permitted to go to work, but will be available,  
20 and therefore, she would get paid. So I just wanted  
21 to throw that out there to see how you wanted to  
22 handle the Alternate. It's actually since I don't  
23 expect the jury to even stay tonight.

24 THE COURT: It's okay with me.

25 MR. ECKERT: I don't have any

1 objections.

2 MS. MEEHAN: That's fine.

3 THE COURT: I've done it this way in  
4 the past. It's not the conservative way to handle it.  
5 Oh, I don't mean -- I'm not talking politics at all,  
6 but, if that's agreeable to everyone, we'll instruct  
7 her that she can't read or do anything dealing with  
8 the case, and she has to be available in the event  
9 another juror has a good reason for abstaining himself  
10 or herself.

11 THE CLERK: And she --

12 MR. ECKERT: Sorry.

13 THE CLERK: -- and she has to  
14 specifically be instructed that she cannot report to  
15 work.

16 THE COURT: Yes.

17 MR. ECKERT: (Indiscernible - 4:27:34)  
18 all the defendants bring no objection to that  
19 procedure.

20 MR. WITTELS: No objection.

21 MR. PATTERSON: No objection.

22 THE COURT: I didn't hear you.

23 MS. MEEHAN: No objection. I'm sorry.

24 THE COURT: I should tell you, when you  
25 speak at the lectern, your habit is to move the mic



1 up, which is great. It might give you some feeling of  
2 comfort, or what have you, but it makes it very hard  
3 to hear.

4 MS. MEEHAN: Oh, sorry. I always hit  
5 the mic with my gestures, so it's always just --

6 THE COURT: All right. I'll instruct  
7 the jury as (indiscernible - 4:28:06).

8 MR. ECKERT: Okay.

9 (Sidebar concluded)

10 THE COURT: Counsel has suggested one  
11 minor correction and they're right. I misread  
12 something, and it concerns --

13 (Asides)

14 THE COURT: -- two minor corrections.  
15 The first, it concerns consciousness of guilt, and  
16 it's page 18. I read that if you believe that Donnie  
17 Smith ran from police officers, then you must consider  
18 this conduct along with all the other evidence in  
19 deciding whether the Government has proved beyond a  
20 reasonable doubt that he committed the crime charged.  
21 My use of the word "must" was wrong.

22 It should read, "If you believe that  
23 Donnie Smith ran from the police officers, then you  
24 may," not must, "then you may consider this evidence,  
25 or this conduct, along with all the other evidence in

1 deciding whether the Government has proved beyond a  
2 reasonable doubt that he committed the crime charged."  
3 That's the first correction.

4 The second correction, I've been told  
5 that in repeating Donnie Smith's name as many times as  
6 I repeated it, on one occasion I identified him as  
7 Dante Smith. That was a mistake. The Defendant is  
8 Donnie Smith, not Dante Smith. So that should be  
9 corrected.

10 Other than that, the charge as I read  
11 it is going to be presented to you as soon as we make  
12 the one or two minor changes that need to be made.  
13 All of the exhibits received in evidence will be given  
14 to you. There will be a court officer -- is there a  
15 court officer who will be sworn, Ms. Hall?

16 THE CLERK: Yes, sir.

17 THE COURT: Where is --

18 THE CLERK: He's in the back of the  
19 courtroom.

20 THE COURT: Oh, he's here. Let's  
21 administer the oath to the court officer while the  
22 jury is here.

23 (Court officer sworn)

24 THE CLERK: Please state your full  
25 name, and spell your last name for the record.

1                   OFFICER JORDAN:   CSO Michael Jordan, J-  
2   O-R-D-A-N.

3                   THE CLERK:   Thank you.

4                   THE COURT:   Thank you.   Court Security  
5   Officer Jordan will be in attendance outside the jury  
6   room door.   He might be succeeded by other court  
7   officers, but there will always be a court officer in  
8   attendance.

9                   And now, you have a decision to make.  
10   It's 4:30, and I told you that at the end of the day  
11   we would decide whether you wanted to stay and begin  
12   deliberations, or wait until tomorrow morning.   And  
13   what I'm going to ask you to do, this will not be a  
14   vote in open court.   We don't do that very often.   I  
15   think we've had the last of those votes in open court.  
16   But I want you to go to -- go back to the jury room  
17   and decide among yourselves, quickly, so that we can  
18   decide what to do, decide quickly whether you wish to  
19   remain tonight or come back tomorrow morning and  
20   resume deliberations as soon as all of you are  
21   together.

22                   Is there anything else that needs to be  
23   done at this stage of the proceedings?

24                   MR. ECKERT:   No, Your Honor.

25                   MR. PATTERSON:   No, Your Honor.   Thank

1 you.

2 MR. WITTELS: No, Your Honor.

3 MS. MEEHAN: No, Your Honor.

4 THE COURT: All right. Let's usher the  
5 jury into the jury room.

6 THE CLERK: All rise.

7 THE COURT: You'll get back to me right  
8 away.

9 (Jury out)

10 THE COURT: Be seated everyone. We'll  
11 wait for the jury.

12 (Pause)

13 THE COURT: I'll read the note. "The  
14 juror team has elected a foreperson, and has decided  
15 as a group to begin deliberations tomorrow morning."

16 Let's call them back. I want to tell  
17 them what they should do. And there's no objection to  
18 that, I'm going to let them do that, which is what I  
19 expected.

20 (Pause)

21 THE CLERK: All rise.

22 (Jury in)

23 THE COURT: Be seated, everyone.

24 First, we got your note. You wish to  
25 go home and start deliberations tomorrow morning, and

1 that's fine, and that's what we're going to do. I  
2 want you all here at 9:30, by 9:30 tomorrow morning.  
3 You cannot begin your deliberations, however, until  
4 all 12 of you, there will be 12 of you deliberating.

5 I'm going to excuse the Alternate  
6 juror, I'll explain that to her, but she'll be on  
7 standby in case one of you gets ill, or is otherwise  
8 unable to participate.

9 We have arranged with the IT people  
10 here in the courthouse to bring to the jury room a  
11 laptop and a television set, and that person will  
12 explain to you how to work it. I'm sure some of you  
13 know how, but we want to be sure you know how to work  
14 this equipment so that if you choose to, you can play  
15 all or part of the videos that are in evidence, and  
16 those will be provided to you. But that will happen  
17 early tomorrow morning.

18 Also, we're going to have to make some  
19 minor changes in the verdict forms in the charge, and  
20 they will be provided to you early tomorrow morning as  
21 will the exhibits.

22 Now, you know all the evidence. You've  
23 heard all the evidence, you've heard the closing  
24 arguments, you've heard my charge. Now, it's your  
25 time to begin the oh so important task of jury

1 deliberations.

2 Keep in mind that you cannot deliberate  
3 until all 12 of you are there, and that if, for  
4 example, during deliberations someone wants to leave  
5 to use the restroom or whatever, you've got to stop.  
6 You cannot deliberate in groups. You've got to  
7 deliberate as a jury of 12 people.

8 I'm going to repeat very briefly,  
9 anyone asks you about what you did today at home, tell  
10 them nothing. Don't listen to anything that might be  
11 broadcast over the radio dealing with the case, and  
12 don't view anything that might be broadcast on  
13 television, don't read anything that might be printed  
14 in any newspaper dealing with the case, and just don't  
15 discuss the case with anyone other than your fellow  
16 jurors.

17 The reason I've told you over and over  
18 again you could probably give this instruction  
19 yourselves now, but the reason is you've got to decide  
20 the case based solely on the evidence presented in the  
21 courtroom and not on anything else.

22 Be sure you leave your juror notebooks  
23 in the jury room, and we will not call you back into  
24 the courtroom tomorrow morning. We'll check on you to  
25 make sure all is well. As soon as all 12 of you are

1       there, you may begin deliberations. Okay.

2                       Now, Alternate juror has to retrieve  
3       her belongings. We have to do that first, yes?

4                       You're looking at me with that face.  
5       And she really knows what she's doing. She's telling  
6       me I'm doing something. And I'll talk --

7               (Asides)

8                       THE COURT: On the question whether you  
9       can all go back into the jury room including the  
10      alternate, and the alternate can bring her belongings  
11      out, Melan Hall and Deputy Wince (phonetic), you can  
12      all go back into the jury room, we don't have to send  
13      her back first, but don't discuss the case at all.  
14      And I'll have some instructions for the alternate  
15      juror, and I want her to come back into the courtroom.

16                      The rest of you may go home, and I'll  
17      see you tomorrow morning at 9:30.

18                      THE CLERK: All rise.

19               (Jury out)

20                      THE COURT: Be seated everyone. I want  
21      to give the alternate juror the alternate juror  
22      instructions just in case we have a need to call her.

23               (Pause)

24                      THE CLERK: Are you ready for the  
25      alternate?

1 THE COURT: I am.

2 THE CLERK: All rise.

3 (Alternate Juror in)

4 THE COURT: Ms. Hall, will you show her  
5 to the first --

6 Be seated, everyone.

7 I'm not going to refer to you by name.  
8 I haven't done that throughout the trial, but that's  
9 not to be impersonal. That's because I don't think  
10 it's necessary to broadcast your name throughout the  
11 court -- courtroom.

12 I understand you have requested to be  
13 released from having to return to the courthouse  
14 tomorrow morning. Is that correct?

15 ALTERNATE JUROR: Yes.

16 THE COURT: I have no objection to  
17 that, but it still is possible for a juror to call in  
18 sick tomorrow, or for something else to happen to a  
19 juror. So your services might still be needed.

20 Now, it's appropriate to release a  
21 juror, an alternate juror, subject to call, and that's  
22 what I'm doing to you. You may --

23 ALTERNATE JUROR: But it means I can't  
24 go to work tomorrow.

25 THE COURT: I don't know whether that



1     pleases you are not. The smile on your face tells me  
2     that that might not be so bad.

3                   ALTERNATE JUROR: No, I kind of want to  
4     go back. I'm a teacher, so I want to go back to my  
5     students.

6                   THE COURT: I'm sure you do.

7                   ALTERNATE JUROR: Yeah.

8                   THE COURT: But we've got to keep you  
9     so that you can substitute quickly. If a juror isn't  
10    here at the appropriate time at 9:30, we'll want to  
11    call you, and have you substitute. So you'll have to  
12    get back to the courthouse.

13                  ALTERNATE JUROR: Okay.

14                  THE COURT: And we'll keep you advised.  
15    If the jury reaches a verdict, we'll certainly let you  
16    know. Number one.

17                  Number two, it's very important for you  
18    not to read anything that might be written about the  
19    case, or to listen to anything broadcast on radio, or  
20    view anything broadcast on television. It's as though  
21    you're subject to the same restrictions as the rest of  
22    the jury until the jury reaches the verdict. And then  
23    we'll call you, and if you want to come back -- I  
24    don't know how far away you are, but if you want to  
25    come back and join in what happens at the end of the

1 trial, you'd certainly be welcome to do that.

2 But for now, I'm releasing you subject  
3 to call, if a juror calls in and is unable to  
4 participate in jury deliberations. And it's very  
5 important, that role is a very important one, because  
6 the rules provide that in a criminal case, the jury  
7 must include 12 members, have 12 members, in order to  
8 return a true verdict.

9 So, do you think there's anything else  
10 that needs to be said, Mr. Eckert?

11 MR. ECKERT: No, Your Honor, thank you.

12 THE COURT: Patterson?

13 MR. PATTERSON: No, Your Honor. Thank  
14 you.

15 MR. WITTELS: No, Your Honor.

16 THE COURT: Wittels?

17 MS. MEEHAN: No, Your Honor.

18 THE COURT: No. So, I'm going to  
19 excuse you for the evening. Ms. Hall?

20 THE CLERK: All rise.

21 THE COURT: Do we have jurors, Ms.  
22 Hall?

23 THE CLERK: Yeah. Yes.

24 THE COURT: Contact information?

25 THE CLERK: Yes.

1 THE COURT: Good. Thank you.

2 (Alternate juror out)

3 THE COURT: All right. Be seated  
4 everyone.

5 Something that has to be done that  
6 doesn't require all of you, I must go over the charge  
7 for Count III very briefly with the Government and Mr.  
8 Patterson. Same is true of the verdict form.

9 I don't think there's anything else. I  
10 have the stipulations. We've talked about the  
11 procedure for instructing the jury on the use of the  
12 laptop and television set to view the video.

13 Oh, yes. I've issued a formal order  
14 bifurcating Counts I and II from Count III. I issued  
15 an oral order at the beginning of the trial, but I  
16 decided it was necessary to issue a formal order.  
17 It's dated today. I decided not to file it for  
18 reasons that I'll not go into in open court. I don't  
19 think it's necessary to file it, and I think it's in  
20 Mr. Smith's interest that that not be filed.

21 We'll file it after the jury reaches a  
22 verdict on Count III, but not until.

23 All right. Is there anything else?

24 The Government exhibits, where are  
25 those books -- where is the book?

1 MR. ECKERT: They're right here, Your  
2 Honor.

3 THE COURT: Give the exhibit book and  
4 the exhibit list to Mr. Cosgrove (phonetic), and he'll  
5 give it to the jury tomorrow morning.

6 MR. ECKERT: Very well, Your Honor.

7 THE COURT: Ms. Meehan, where are your  
8 exhibits and the exhibit list?

9 You do? All right. Well, that needs  
10 to be done. Then the only other thing that I can  
11 think of, I want to go over the charge and the verdict  
12 form for Count III. Is there anything else the  
13 Government believes needs to be done?

14 MR. ECKERT: No, Your Honor.

15 THE COURT: Well, Patterson is here and  
16 Mr. Smith can remain or not. We're going to talk  
17 about the charge on Count III, and the verdict sheet  
18 on Count III.

19 MR. WITTELS: Judge, I assume you want  
20 us in attendance while the jury is deliberating? Or  
21 not?

22 THE COURT: How far away are you, Mr.  
23 Wittels?

24 MR. WITTELS: My office is at 1429  
25 Walnut Street.

1 THE COURT: I don't know how long  
2 they'll be, and as long as we have contact  
3 information.

4 MR. WITTELS: Yeah. I'll give that to  
5 Ms. Hall.

6 THE COURT: I don't think -- I don't  
7 think it's necessary for you to be here at 10 o'clock.

8 MR. WITTELS: All right. You'll call  
9 me if they have a question, and I'll be here in 20  
10 minutes.

11 THE COURT: We'll call you if the jury  
12 has a question. We've eliminated one issue, and that  
13 is the laptop and the --

14 MR. WITTELS: Yeah.

15 THE COURT: -- television set. Ms.  
16 Hall?

17 THE CLERK: Are there any other  
18 exhibits that need to be -- need to go back to the  
19 jury? I just want that agreed to if you're not going  
20 to be here in the morning, so that I know.

21 THE COURT: Well, we have the  
22 Government exhibits.

23 MR. ECKERT: I'm happy to let Mr.  
24 Wittels look at the binder.

25 MR. WITTELS: No, I trust you.

1 THE COURT: Mr. Patterson?

2 MR. PATTERSON: I'm 65 miles away. So  
3 I'll be here.

4 THE COURT: Yes. Good idea. I was  
5 thinking more about the exhibits.

6 MR. PATTERSON: Oh, I'm sorry, Judge. I  
7 thought you meant --

8 THE COURT: Is there any issue with  
9 regard to the Government exhibits in the binder? Only  
10 the exhibits that were received in evidence should be  
11 included, along with an exhibit list. And counsel  
12 should satisfy themselves before they leave tonight  
13 that that is so. All right. Any other issues Mr.  
14 Wittels? You've signed off on the exhibits?

15 MR. WITTELS: No. Mr. Eckert looks  
16 like a trustworthy guy.

17 MR. PATTERSON: I'm okay with them, for  
18 the record, Your Honor.

19 MS. MEEHAN: We're fine, Your Honor.

20 THE COURT: All right. I don't think  
21 there's anything else. Anyone have anything else to  
22 present to the Court, other than Patterson and Eckert,  
23 and they'll stay, and Ms. Martin will stay.

24 MR. PATTERSON: No, Your Honor.

25 MR. ECKERT: No, Your Honor.

1 THE COURT: All right. Then I'm going  
2 to excuse everyone other than Mr. Patterson, Mr.  
3 Eckert, and Ms. Martin, and --

4 MR. PATTERSON: And, Your Honor, Mr.  
5 Smith can go back. He does not wish to be here for --

6 THE COURT: Fine.

7 MR. PATTERSON: -- these --

8 THE COURT: That's all right. That's  
9 fine. All right. Why don't we recess for just a few  
10 minutes, Michael? I'll sit -- stay on the bench.

11 Michael? We're in recess to let them  
12 go.

13 THE CLERK: All rise.

14 (Recessed at 4:56 p.m., reconvened at 4:57 p.m.)

15 THE COURT: These are the three  
16 stipulations. I don't think I have any copies.  
17 They're not signed, but I think they're all right.

18 All right. We have a very short  
19 verdict form, and a very short charge. After that  
20 very long charge.

21 Any objections to the jury charge on  
22 Count III?

23 MR. ECKERT: We do not have any, Your  
24 Honor.

25 MR. PATTERSON: None on behalf of Mr.

1 Smith, Your Honor.

2 THE COURT: I thought there was an  
3 issue on justification. I don't know that it works,  
4 but I thought you were raising one.

5 MR. PATTERSON: I was going to raise  
6 it, but I think if we get to charge III, that would  
7 assume that they would discount my justification on  
8 Counts I and II. For purposes of --

9 THE COURT: I'm sorry, what's  
10 happening, Michael?

11 (Pause)

12 THE COURT: What do you think that was?

13 THE CLERK: We're getting feedback from  
14 one of the microphones. It's been resolved.

15 THE COURT: Okay. Go ahead, Mr.  
16 Patterson.

17 MR. PATTERSON: I originally advised  
18 your clerk, Your Honor, that it may have been my  
19 intent to ask for another justification charge on the  
20 persons not to possess, however, since -- if we get to  
21 Count III, I would assume that -- well, we're going to  
22 get to Count III no matter what, but if my client is  
23 convicted on Count I and II, that I would assume the  
24 jury has discounted my justification defense in the  
25 first case the chief.



1                   So with that being said, I will not be  
2 asking for justification charge. I think I made my  
3 reasons clear on the record for future review.

4                   THE COURT: All right. Let's look at  
5 the verdict form.

6                   MR. PATTERSON: And I do have a minor  
7 objection to that, Your Honor.

8                   THE COURT: All right.

9                   MR. PATTERSON: I believe -- and I left  
10 mine at home, but I believe it says that my client  
11 possessed a gun. I think that the Glock was charged  
12 in the indictment. I think it should say, "the store  
13 gun," or, "the Glock," either one. I believe, "the  
14 store gun," would be easier for the jury to make that  
15 --

16                   THE COURT: I think what we'll do is  
17 identify it as it's charged, and then put in parens,  
18 "the store gun."

19                   MR. PATTERSON: And that'll be fine  
20 then. That would be acceptable.

21                   THE COURT: Do you agree to that, Mr.  
22 Eckert?

23                   MR. ECKERT: Of course, Your Honor.  
24 Thank you.

25                   THE COURT: That's not a problem. And

1 I'm going to change the instruction at the bottom of  
2 the form to read, "After the foreperson has completed  
3 this jury verdict form in accordance with the  
4 instructions, the foreperson should sign and date the  
5 form below, and the jury should return to the  
6 courtroom." We'll do it that way.

7 All right. I don't think we have  
8 anything, and I see no issue with you, Mr. Wittels,  
9 and -- where's Ms. Meehan? Is she -- she's going?

10 MR. WITTELS: She left, Your Honor.

11 THE COURT: Being available by  
12 telephone. We have contact information. Well, I know  
13 we have it for Ms. Meehan. Mr. Wittels, do we have  
14 your contact information?

15 MR. WITTELS: I'll make sure Ms. Hall  
16 has it.

17 THE COURT: Good.

18 MR. WITTELS: I think she has my main  
19 number, and I'll give her my cell.

20 MR. PATTERSON: Your Honor, and I think  
21 I believe I misspoke. I'm not getting my thoughts  
22 clear on the record.

23 If my client is acquitted of Counts I  
24 and II, and then we go to Count III, then yes, I would  
25 request the justification charge. So, if I can argue

1 that now for the reasons why I believe it should be  
2 included.

3 THE COURT: Does the Government object?

4 MR. ECKERT: We don't, Your Honor.

5 THE COURT: Pardon me?

6 MR. ECKERT: I don't think so. I mean,  
7 I hadn't really thought about, because I just --

8 THE COURT: It's a little different.

9 MR. ECKERT: Yeah. Actually, may I  
10 just have a second, Your Honor, on that?

11 THE COURT: Because -- he has it.

12 MR. ECKERT: He's in use. Right.  
13 Right.

14 THE COURT: He has a gun.

15 MR. ECKERT: Right. Yeah, actually, I  
16 --

17 THE COURT: Although he's challenging  
18 the -- well, the fact that it's a real gun. And  
19 you've argued that why would you leave the real gun in  
20 the car, and take the toy gun? But --

21 MR. ECKERT: I need to be able to  
22 present argument on that tomorrow morning, Your Honor.  
23 I just want to think about that for second, because I  
24 think it works slightly different with the position of  
25 his wife as to whether the justification argument's

1     been made in relation to this case. I think for Count  
2     III it works slightly different, given that it's  
3     continuing defense to the time he leaves the store, up  
4     until the time he crashes the car, which is a good  
5     distance away.

6                     So, I hadn't really thought of it in  
7     this context, so I just act if the Court will permit  
8     it, if --

9                     THE COURT: Well, that raises an  
10    interesting issue. Like, why didn't he leave the gun  
11    behind, or throw it away --

12                    MR. ECKERT: Right.

13                    THE COURT: -- or do something like  
14    that.

15                    MR. ECKERT: Right.

16                    MR. PATTERSON: I mean --

17                    MR. ECKERT: I didn't meant to talk  
18    over you. I just -- I think that I -- right, I think  
19    there is with the -- I haven't read this case law in  
20    some time, but the felon in possession of  
21    justification case law deals with -- there are certain  
22    requirements that have to be met, such as you can only  
23    possess the gun for the limited purpose of whatever  
24    the offense -- or whatever the other issue is. Once  
25    he leaves the area, I think it wouldn't apply, but I

1 would just ask for --

2 THE COURT: I am not familiar with that  
3 law at all. I've never had it. So, I know I'm  
4 looking out for hard work tonight, but I'm going to  
5 need something, cases.

6 MR. ECKERT: Sure.

7 THE COURT: I don't need a law review  
8 article. But I need some case authority if there's  
9 going to be an objection.

10 MR. PATTERSON: I would be --

11 MR. ECKERT: Understood, Your Honor.

12 MR. PATTERSON: -- I would be referring  
13 to the case that's cited in the comments to the  
14 standard jury instructions for the third charge.  
15 That's -- that would be United States v. Dodd, United  
16 States v. Plo (phonetic), P-L-O, and I believe --  
17 yeah, those two cases. And those are right in the  
18 comments.

19 MR. ECKERT: Okay. Yeah, I have your  
20 file.

21 MR. PATTERSON: Okay.

22 THE COURT: All right.

23 MR. ECKERT: Thank you, Your Honor.

24 THE COURT: I don't think there's  
25 anything else we have to do, unless you just want to

1 hang out until --

2 MR. PATTERSON: I've got a long drive,  
3 Judge. I would appreciate that.

4 THE COURT: Ms. Martin has registered  
5 by her smile the fact that she doesn't want to hang  
6 out.

7 MR. WITTELS: Judge, I've offered Mr.  
8 Patterson --

9 THE COURT: All right. Then we're in  
10 recess. No one has to appear tomorrow at 9:30. You  
11 can, or you do if you --

12 MR. PATTERSON: Yeah, I've got to --  
13 I've got to drive.

14 MR. WITTELS: Judge, I've offered him  
15 the use of my conference room.

16 MR. PATTERSON: And I might take him up  
17 on that.

18 MR. WITTELS: Yeah.

19 THE COURT: You can do that.

20 MR. WITTELS: We only -- we charge  
21 premier rates. We charge CJN rates.

22 MR. PATTERSON: Get a discount.

23 THE COURT: Or you can use the witness  
24 room if you want to come down here. I don't want --

25 MR. PATTERSON: Okay. I have some work

1 to catch up on. So I'll keep myself busy.

2 THE COURT: But you don't have to sit  
3 in the courtroom.

4 MR. PATTERSON: Okay. That'll be good.

5 (Asides)

6 (Proceedings recessed at 5:06 p.m., February 3,  
7 2020, to reconvene at 9:30 a.m., February 4, 2020.)

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CERTIFICATION

We, Katherine A. Peterson and Sharon Woodward, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



KATHERINE A. PETERSON, APPROVED TRANSCRIPTIONIST



SHARON WOODWARD, APPROVED TRANSCRIPTIONIST

Dated: November 19, 2020



[&amp; - 5:05]

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